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Anjelino v. New York Times Co.: Granting Men Standing to Fight against Injuries Received as a Result of Sexual Discrimination towards Female Co-Workers

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ANJELINO v. NEW YORK TIMES CO.: GRANTING MEN STANDING TO FIGHT AGAINST INJURIES RECEIVED AS A RESULT OF SEXUAL DISCRIMINATION TOWARDS FEMALE CO-WORKERS

I. INTRODUCTION

Recognizing the prevalence of discriminatory employment practices in the United States, Congress enacted Title VII of the Civil Rights Act of 1964 ("Title VII").[1] Title VII provides that it "shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . . ."[2] Although Title VII, as enacted, includes sex-based discrimination, Congress did not originally intend to include sex-based discrimination in the act and did not amend Title VII to include the word "sex" until the day before it passed.[3]

1. *See* H.R. REP. NO. 88-914, at 26-29 (1963), *reprinted in* 1964 U.S.C.C.A.N. 2355, 2513-15 (recognizing prevalence of discriminatory employment practices); *see also* H.R. REP. NO. 92-238, at 4-5 (1972), *reprinted in* 1972 U.S.C.C.A.N. 2137, 2139 (noting that Congress "recognized the prevalence of discriminatory practices" and realized Federal legislation was needed to deal with problem). In the 1960s, there was a gross disparity in the unemployment rates between minorities and white individuals. *See* H.R. REP. NO. 88-914, at 26-29 (noting unemployment rates). In 1962, the unemployment rate of minorities was more than twice the unemployment rate of white workers. *See id.* at 27 (noting discrimination in employment). In addition, among the minorities who were employed, their jobs were primarily in the semiskilled and unskilled occupations, whereas the employed Caucasians held mostly professional jobs. *See id.* at 27-28 (same). According to the House Report, discrimination in the workforce has a twofold effect on the country's economy. *See id.* at 28-29 (noting effect of discrimination on economy). First, the purchasing power of the country is not being fully developed because several minorities are without the income to purchase goods, which stalls any potential increase in gross national product. *See id.* (same). Secondly, the country is stuck with payment of unemployment compensation, relief, disease and crime. *See id.* (same). Consequently, it is the House's belief that equality in the workforce will bring prosperity to minorities as well as to the country. *See id.* (noting need to end discrimination).

2. 42 U.S.C. § 2000e-2(a) & (a)(1) (1994).

3. *See* Barnes v. Costle, 561 F.2d 983, 986-87 (D.C. Cir. 1977) (discussing legislative history of Title VII). Ironically, the amendment was offered by a southern opponent to Title VII who put the amendment on the floor in a last ditch effort to block the bill that became Title VII. *See id.* at 987 (discussing addition of word "sex" to Title VII protections). Much to his surprise, the majority quickly accepted the amendment and Title VII was passed. *See id.* (discussing adoption of Title VII).

Contrary to the atmosphere when Title VII was first adopted, when the Civil Rights Act of 1964 was amended by the Equal Employment Opportunity Act of 1972, sex-based discrimination was at the forefront of the legislature's discussions. *See id.* (noting legislature's deep concern about sex-based discrimination in years

The fact that Congress was a day shy from passing Title VII without including sex-based discrimination was perhaps an omen that sex discrimination would be difficult to remove from the workplace. Even though Title VII specifically prohibits sex discrimination, it continues to be prevalent in the workplace.[4] Numerous studies show that women work in segregated jobs where at least seventy percent of the overall workforce is female, and the positions held by the females are the "less challenging, the less responsible, and the less remunerative positions."[5] Furthermore, studies suggest that the number of sexual harassment cases continues to rise as more women enter the work force.[6] The continued presence of sex dis-

following adoption of Title VII). Despite Title VII's prohibitions against discrimination on the basis of sex, studies taken in the years following the passage of Title VII showed that women were still being placed in "less challenging, less responsible, and less remunerative positions" solely because of their sex. H.R. REP. NO. 92-238, at 4-5. Alarmed that the passage of Title VII did little to improve the status of women in the workforce, Congress now considered "discrimination against women . . . no less serious than other forms of prohibited employment practices and . . . [vowed to give it] the same degree of social concern given to any type of unlawful discrimination." *Id.* at 5.

4. *See* H.R. REP. NO. 92-238, at 4-5 (noting that despite progress made since enactment of Title VII, discrimination against women continues). For a discussion of the prevalence of discriminatory employment practices towards women, see *infra* notes 5-7 and accompanying text. Although sex discrimination can be directed at both males and females, this Casebrief deals only with situations where the sex discrimination is directed at females.

5. H.R. REP. NO. 92-238, at 4-5; *accord* Martha Chamallas, *Exploring the "Entire Spectrum" of Disparate Treatment Under Title VII: Rules Governing Predominantly Female Jobs*, 1984 U. ILL. L. REV. 1, 1 (1984) (noting that half of all female workers are employed in positions dominated by females). Female employees normally occupy the following professions: clerks, saleswomen, waitresses, hairdressers, teachers and nurses. *See id.* at 2 n.3 (describing typical "female" jobs). Only six percent of females are managers and administrators, and only two percent are in skilled craft jobs. *See id.* (comparing female-dominated jobs with male-dominated jobs). Studies show that employees, whether male or female, who occupy female-dominated jobs, received about $3,500 less a year than employees in male-dominated jobs. *See* Donna Leinwand, *Pay Gender Gap Is Narrowing, But Slowly: Women Earn Average 24 Percent Less Than Men, But Employers Say Issue Is Complex*, DET. NEWS, Sept. 5, 1999 (noting that statistics from Labor Department show that "[f]or every dollar a man earns, a woman gets about 76 cents"); Mary-Kathryn Zachary, *Because of Sex–Part II, The Traditional Cases*, SUPERVISION, Jan. 1, 2000, at 22 (noting that in addition to having different jobs than male employees, female employees also receive less money than male employees).

6. *See* 144 CONG. REC. E1081-82 (daily ed. June 10, 1998) (statement of Rep. Hamilton) (noting sexual harassment claims increase as more women enter workforce). According to the Equal Employment Opportunity Commission (EEOC), "the number of sexual harassment [claims] filed with the EEOC [has] increased from 6,800 in 1990 to nearly 16,000 cases in 1997." *Id.* Furthermore, most studies of sexual harassment show that somewhere between forty and seventy percent of female employees experience some type of sexual harassment during their careers. *See* Ruth Ann Strickland, *Sexual Harassment: A Legal Perspective for Public Administrators*, PUB. PERSONNEL MGMT., Dec. 1995, at 493 (discussing prevalence of sexual harassment). Although both men and women have been subjects of sexual harassment, studies suggest that women experience all forms of sexual harassment more than men. *See id.* (noting that examination of Alabama, Arizona,

crimination in the workplace results from the female employee's failure to report the sex discrimination, which is compounded by the fact that courts disagree about how broadly to define standing when the plaintiff is not the direct target of the discrimination.[7]

Generally, courts readily grant standing to a white plaintiff who alleges that he or she was exposed to, and suffered some injury as a result of discriminatory employment practices aimed at the plaintiff's minority co-workers.[8] Courts do not take such a broad view in indirect discrimination cases however when it is a male plaintiff alleging that he suffered some harm from sex discrimination aimed at his female co-workers.[9] In fact the majority of the circuits refuse to grant standing to a male employee alleging that he has suffered an injury as a result of his employer's discriminatory employment practices towards female employees.[10]

In a ground-breaking case, *Anjelino v. New York Times Co.*,[11] the United States Court of Appeals for the Third Circuit was faced with an indirect discrimination case in which the male plaintiff was charging his employer with engaging in discriminatory employment practices towards his female co-workers.[12] The court refused to follow the majority view.[13] Instead, the court created a circuit split by granting the male employee standing to sue for his employer's discriminatory practices.[14]

In light of this newly created circuit split, this Casebrief discusses standing in discrimination cases brought under Title VII and focuses on standing in sex discrimination cases. Specifically, it analyzes the Third Cir-

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Texas, Utah and Wisconsin showed that women experience more sexual harassment than men).

7. *See* Strickland, *supra* note 6, at 493 (noting that despite prevalence of sexual harassment in workplace and its acceptance by courts as actionable claim of sex discrimination, female employees still fail to report it). For a further discussion of the reasons why female employees fail to report sexual discrimination, see *infra* note 49 and accompanying text. For an analysis of court's disagreement as to the proper definition of standing in Title VII cases, see *infra* notes 86-139 and accompanying text.

8. For a discussion of standing in indirect discrimination cases where the plaintiff is a white employee alleging that his or her employer engaged in discriminatory employment practices toward minority workers, see *infra* notes 86-112 and accompanying text.

9. For a discussion of standing in indirect discrimination cases where the plaintiff is a male employee alleging his employer engaged in discriminatory employment practices toward female workers, see *infra* notes 113-27 and accompanying text.

10. For further discussion of the view of the majority of the circuits, see *infra* notes 113-27 and accompanying text.

11. 200 F.3d 73 (3d Cir. 1999).

12. For a discussion of the facts of *Anjelino,* see *infra* notes 140-55 and accompanying text.

13. For a discussion of the holding of *Anjelino,* see *infra* notes 156-78 and accompanying text.

14. For a comparison of the circuits' view of standing in indirect sexual discrimination cases, see *infra* notes 113-22 and 156-78 and accompanying text.

cuit's continuously broadening view of standing in discrimination cases and compares it with the view of other courts. Part II discusses the enactment of Title VII and its use to eliminate sex discrimination, including sexual harassment, from the workplace.[15] Part III focuses on the elements a plaintiff must satisfy to have standing to present a justiciable controversy to the court.[16] This section concludes with a detailed discussion of standing requirements in Title VII cases, focusing on standing requirements in sex-based discrimination suits under Title VII.[17] Part IV discusses the Third Circuit's decision in *Anjelino* to expand standing in sex-based discrimination claims under Title VII to include male employees alleging indirect discrimination.[18] Finally, Part V discusses the impact of the Third Circuit's decision in *Anjelino* and comments on the issues the decision left unanswered.[19]

II. BACKGROUND OF TITLE VII AND SEX-BASED DISCRIMINATION UNDER TITLE VII

A. *Title VII - The Equal Employment Opportunity Act: Developed to Bring Equality to the Workplace*

Title VII was enacted with the primary goal of reducing discrimination in the workforce by providing a mechanism for the country to make certain that every job is available to every citizen regardless of his or her race, gender or religion.[20] Specifically, Congress drafted Title VII "to eradicate discrimination in 'any aspect of the employment relation including hiring, promotion, transfer or firing'" on the basis of race, color, sex, religion or national origin.[21] Congress believed that this elimination of "discriminatory employment practices would result in the consideration of

15. For a discussion of sexual discrimination under Title VII, see *infra* notes 23-45 and accompanying text.

16. For a discussion of constitutional standing requirements and prudential standing requirements, see *infra* notes 53-77 and accompanying text.

17. For a discussion of standing requirements in Title VII discrimination cases, see *infra* notes 78-127 and accompanying text.

18. For a discussion of the Third Circuit's view of standing in sexual discrimination cases brought under Title VII, see *infra* notes 158-78 and accompanying text.

19. For a discussion of the impact of *Anjelino,* and a discussion of the questions left unanswered by that decision, see *infra* notes 179-91 and accompanying text.

20. *See* H.R. REP. NO. 88-914, at 29 (1964), *reprinted in* 1964 U.S.C.C.A.N. 2355, 2516 (noting Congress' purpose for enacting Title VII). Title VII established the EEOC, which is responsible for investigating complaints concerning the existence of discrimination at places of employment. *See id.* Although the EEOC's task is to correct abuse, it is not expected to promote equality with absolute certainty. *See id.* at 2516 (noting EEOC's limited role).

21. Laura M. Jordan, Note, *The Empathetic, White Male: An Aggrieved Person Under Title VII?*, 55 WASH. U. J. URB. & CONTEMP. L. 135, 137 (1999) (quoting RICHARD A. EPSTEIN, FORBIDDEN GROUNDS 160-61 (1992)); *accord* 42 U.S.C. § 2000e-2(a)(1)(1994).

people based on their individual merit, thereby producing the additional benefit of improved efficiency in the marketplace."[22]

B. *Sexual Discrimination Under Title VII*

Because the word "sex" was added to Title VII's coverage at the last minute, there is little legislative history concerning discrimination on the basis of sex.[23] Despite this absence of legislative history, scholars assume "that one of Congress' main goals [when deciding to add sex to Title VII] was to provide equal access to the job market for both men and women."[24] As a result, Congress made it an unlawful employment practice for an employer to provide different opportunities to men than it provides to women.[25] In response to Title VII, courts have held that it is an unlawful employment practice for employers to discriminate against individuals on the basis of sex with respect to salaries, required hours and overtime, job assignments, job promotions, job transfers and fringe benefits.[26] Courts

22. *Jordan, supra* note 21, at 137 (citations omitted); *accord* Valerie L. Jacobson, Note, *Bringing a Title VII Action: Which Test Regarding Standing to Sue Is the Most Applicable?*, 18 FORDHAM URB. L.J. 95, 95 (1990) (noting Title VII was enacted to guarantee equality of employment opportunities by eliminating discriminatory practices).

23. *See* John J. Donohue III, *Prohibiting Sex Discrimination in the Workplace: An Economic Perspective*, 56 U. CHI. L. REV. 1337, 1338 (1989) (noting absence of legislative history concerning issue of sex discrimination).

24. ERNEST C. HADLEY & GEORGE M. CHUZI, SEXUAL HARASSMENT: FEDERAL LAW 2-3 (1994) (quoting *Corne v. Bausch & Lamb, Inc.*, 390 F. Supp. 161 (D. Ariz. 1975)). Although Title VII forbids discrimination based on sex, Congress did not originally intend to include discrimination on the basis of sex in Title VII. *See* Barbara L. Zalucki, *Discrimination Law–Defining the Hostile Work Environment Claim of Sexual Harassment Under Title VII*, 11 W. NEW ENG. L. REV. 143, 147 (1989) (explaining discrimination on basis of sex was not originally part of Title VII). Discrimination on the basis of sex was added to Title VII's protections the day before the House of Representatives passed the Act, after Representative Howard Smith of Virginia proposed an amendment to include sex. *See id.* (noting Representative Smith proposed floor amendment to include sex under Title VII). Because sex was hastily added to Title VII, there is little legislative history relating to discrimination on the basis of sex. *See* HADLEY & CHUZI, *supra* at 3 (noting absence of legislative history explaining addition of sex to Title VII). When amending Title VII in 1972, however, Congress explained its position regarding sex-based discrimination by explaining that "it is no less serious than other forms of prohibited employment practices and is to be accorded the same degree of social concern given to any type of unlawful discrimination." Zalucki, *supra*, at 147-48 (quoting H.R. REP. NO. 92-238, at 5 (1972), *reprinted in* 1972 U.S.C.C.A.N. 2137, 2141).

25. *See* 42 U.S.C. § 2000e-2(a) & (a)(1) (1994) (making it "an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's sex").

26. *See* HADLEY & CHUZI, *supra* note 24, at 3 (setting forth situations where discrimination on basis of sex constitutes unlawful employment practice (citing *Rosenfield v. Southern Pacific Co.*, 444 F.2d 1219, 1224-25 (9th Cir. 1971) (concluding that discriminating against individuals with respect to job assignments or transfers constitutes unlawful employment practice))); Ridinger v. General Motors Corp.,

were reluctant, however, to conclude that discrimination on the basis of sex also included sexual harassment in the workplace.[27] It was not until the landmark case of *Barnes v. Costle*[28] that the United States Court of Appeals for the District of Columbia Circuit held that sexual harassment violated Title VII.[29]

In *Barnes*, the appellant claimed sex discrimination violative of Title VII.[30] The crux of her complaint was that she was discriminated against because she refused to submit to her supervisor's request to have an after-hours affair.[31] Finding in favor of the appellant, the D.C. Circuit concluded that sexual harassment is gender-based, and thus falls within the protections afforded by Title VII's prohibition against sex discrimina-

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325 F. Supp. 1089, 1097-98 (D. Ohio 1971) (concluding that discriminating against individuals with respect to hours of employment constitutes unlawful employment practice); Bartmess v. Drewrys U.S.A., Inc., 444 F.2d 1186, 1190-91 (7th Cir. 1971) (concluding that discriminating against individuals with respect to fringe benefits, such as retirement and pension plans constitutes unlawful employment practice); *see also* Barnes v. Costle, 561 F.2d 983, 988 (D.C. Cir. 1977) (noting Title VII is "invoked to strike down impediments to equal employment opportunities between sexes, [such as] discriminatory seniority systems, weight-lifting requirements, and height and weight standards imposed on only one gender" (citations omitted)).

Title VII, which forbids discrimination "because of [or on the basis of] . . . sex," defines the terms "because of sex" or "on the basis of sex" as "includ[ing] but not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions . . . ." 42 U.S.C. § 2000e(k) (1994).

27. *See* HADLEY & CHUZI, *supra* note 24, at 2 (noting courts did not always conclude that sexual harassment constitutes discrimination on basis of sex); *see also* Zalucki, *supra* note 24, at 143-44 (noting difficulty courts had in defining sexual harassment).

28. 561 F.2d 983 (D.C. Cir. 1977).

29. *See* HADLEY & CHUZI, *supra* note 24, at 4 (noting that D.C. Circuit was first court of appeals to hold that sexual harassment violated Title VII); *see also* Bundy v. Jackson, 641 F.2d 934, 942 (D.C. Cir. 1981) (noting that *Barnes* made it clear that "sex discrimination within the meaning of Title VII is not limited to disparate treatment founded solely . . . on gender," but also includes "sex discrimination whenever sex is for no legitimate reason a substantial factor in the discrimination"). As the United States Court of Appeals for the D.C. Circuit noted, it is "much too late in the day to contend that Title VII does not outlaw terms of employment for women which differ appreciably from those set for men, and which are not genuinely and reasonably related to performance on the job." *Barnes*, 561 F.2d at 990. Following the court's opinion in *Barnes*, the EEOC developed advisory guidelines for identifying sexual harassment claims. *See* Zalucki, *supra* note 24, at 144-45 (noting that although Congress never specifically prohibited sexual harassment when amending Title VII, EEOC has created guidelines for identifying sexual harassment claims).

30. *See Barnes*, 561 F.2d at 985-86 (stating facts of case).

31. *See id.* at 986 (demonstrating that appellant was claiming violation of Title VII because of sexual harassment by her supervisor). The district court granted summary judgment to the defendant claiming that the suit did not fall within the protections afforded by the Title VII prohibition against sex discrimination because the appellant was not claiming that she was discriminated against because she was a woman. *See id.* at 990 (explaining that district court denied appellant's sex discrimination claim because she was alleging sexual harassment rather than that discrimination was directed at her because she was female).

tion.[32] Several years after the D.C. Circuit's landmark decision, the United States Supreme Court in *Meritor Savings Bank, F.S.B. v. Vinson*[33] confirmed the *Barnes* holding and informed the circuit courts that sexual harassment indeed violates Title VII if the harassment is "sufficiently severe 'to alter the conditions of [the victim's] employment and create an

32. *See id.* at 990-91 (concluding Title VII was not limited to conditions of employment based solely upon employee's gender, but included situations where gender was factor contributing substantially to underlying discrimination and ultimately concluding that sexual harassment claims are gender-based and violative of Title VII). The court explained that sexual harassment is based on gender because the employer requests sexual favors simply because the employee is a woman. *See id.* at 990 (demonstrating sexual harassment is gender-based because employee would not have been harassed if she were male).

Following its decision in *Barnes*, the D.C. Circuit made another landmark decision in *Bundy v. Jackson*. *See Bundy*, 641 F.2d at 934 (extending *Barnes* decision to hostile work environment context). *Bundy* was the first case to recognize a Title VII violation for hostile work environment sexual harassment. *See id.* at 943-44 (relying on cases finding Title VII violations where employer created or condoned substantially discriminatory work environment, held discrimination against employer on basis of sex amounted to sex discrimination with respect to "terms, conditions, or privileges of employment"); *see also* Zalucki, *supra* note 24, at 149 (recognizing *Bundy* was first case to recognize a claim of sexually hostile work environment). In *Bundy*, the employee did not allege a loss of a tangible job benefit. *See id.* at 149 (noting differences between *Bundy* and quid pro quo sexual harassment cases). Instead, she alleged sexually charged and intimidating insults, such as requests by her supervisors to start sexual relationships with them and telling her "any man in his right mind would want to rape you." *Bundy*, 641 F.2d at 939-41. She further alleged that this conduct affected her work environment and caused her anxiety and debilitation. *See id.* (explaining employee received several sexually charged propositions from her employers and these propositions began to intertwine directly with her employment). Quoting the United States Court of Appeals for the Fifth Circuit's statement that "Congress chose neither to enumerate specific discriminatory practices, nor to elucidate in extenso the parameter of such nefarious activities," the D.C. Circuit concluded that Title VII was not limited to tangible benefits but also includes intangible benefits. *Id.* at 944 (quoting *Rogers v. EEOC*, 454 F.2d 234, 238 (5th Cir. 1971) (concluding that in ethnic discriminatory environment cases, Title VII protection must extend to intangible fringe benefits to prevent potential misuse of such benefits for discriminatory purposes)). Thus, the D.C. Circuit recognized the employee's claim and held that "conditions of employment [that Title VII is designed to protect from discriminatory practices] include the psychological and emotional work environment." *Id.* The D.C. Circuit rationalized that if Title VII protection is not extended to include "discriminatory environments" the employer could sexually harass its employees as long as the employer stopped short of taking any tangible actions against the employee. *See id.* at 945 (noting laws that allow women "to prove that resistance to harassment cost her her job or some other economic benefit are of little help to women fighting sexual harassment if employers stop short of such tangible actions"). Following the D.C. Circuit's lead, in 1986 the United States Supreme Court recognized the hostile work environment claim as a form of sexual harassment under Title VII. *See* Meritor Sav. Bank, F.S.B. v. Vinson, 477 U.S. 57, 65 (1986) (acknowledging that hostile work environment is form of sexual harassment). For a discussion of the Supreme Court's ruling, see *infra* notes 33-35 and accompanying text.

33. 477 U.S. 57 (1986).

abusive work environment.'"[34] In so holding, the Court granted employees the right to bring a Title VII sex-based discrimination claim whether the claim was based on gender or based on sex and regardless of whether the harassment resulted in a loss of tangible benefits.[35]

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34. *Id.* at 65. In *Vinson*, a female employee brought a sexual harassment suit against her employer under Title VII. *See id.* at 60. Specifically, the employee alleged that her employer fondled her, exposed himself to her, followed her into the ladies room and forcibly raped her on several occasions. *See id.* (describing harassment). Relying on guidelines adopted by the EEOC that classify sexual harassment as a form of sex discrimination, the Court concluded that sexual harassment constitutes a violation of Title VII if the harassment is sufficiently severe or pervasive as to adversely alter the victim's employment. *See id.* at 66-67 (noting plaintiff may establish violation of Title VII by showing discrimination based on sex has created hostile work environment). In support of the holding, the Court quoted the United States Court of Appeals for the Eleventh Circuit's powerful statement comparing sexual harassment with racial harassment:

> Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets.

Id. at 67 (quoting *Henson v. Dundee*, 682 F.2d 897, 902 (11th Cir. 1982)).

The EEOC guidelines that the Court relied on were released in 1980 following the *Barnes* decision. *See id.* at 65 (discussing EEOC guidelines). The Court, though recognizing that the guidelines are not controlling on the courts, argued that they constitute a body of experience and informed judgment that courts could use for guidance. *See id.* (recognizing that EEOC guidelines are persuasive authority in sexual discrimination claims under Title VII and can be used by courts to identify actionable sexual harassment claims). According to the guidelines, "[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment," whether or not such conduct is directly linked to the grant or denial of an economic benefit. 29 C.F.R. § 1604.11(a) (1985); *accord Vinson*, 477 U.S. at 65 (noting claim for sexual harassment exists even if sexual harassment does not result in loss of economic benefits). Thus, the EEOC guidelines broadly define sexual harassment and require that the harassing behavior affect the individual's employment either by interfering with or influencing the economic benefits of the employee's employment or by interfering unreasonably with the employee's work performance, thus creating an offensive or hostile work environment. *See* Zalucki, *supra* note 24, at 152 (analyzing EEOC guidelines).

35. *See Vinson*, 477 U.S. at 63-68 (concluding victim of sexual harassment can bring valid sexual discrimination claim under Title VII whether conduct was based on sex or gender).

Currently, there are two types of actionable sexual harassment claims: the quid pro quo sexual harassment claim and the hostile work environment claim. *See* Zalucki, *supra* note 24, at 145 (noting two forms of actionable sexual harassment claims). According to the EEOC, quid pro quo sexual harassment occurs in two different situations. *See* 29 C.F.R. § 1604.11(a) (establishing actionable claims for sexual harassment). First, there is quid pro quo sexual harassment when "submission to . . . conduct [of a sexual nature] is made either explicitly or implicitly a term or condition of an individual's employment." *Id.* Second, quid pro quo sexual harassment also occurs when "submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual." *Id.* Thus, in quid pro quo sexual harassment, the employer solicits sexual favors or otherwise harasses the employee in exchange for a tangible work or economic ben-

C. *Sexual Harassment in the Third Circuit*

Conforming to the Supreme Court's holding in *Vinson*, the Third Circuit has classified sexual harassment as a form of sex discrimination that violates Title VII.[36] In the Third Circuit there are two actionable claims for sexual harassment under Title VII–quid pro quo sexual harassment and hostile work environment sexual harassment.[37] Quid pro quo sexual harassment is conduct of a sexual nature when "submission to such conduct is made . . . a term or condition of an individual's employment [or] submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual."[38] As the United States Court of Appeals for the Third Circuit explained in *Robinson v. City of Pittsburgh*,[39] a plaintiff will succeed in a quid pro quo claim only if

efit. *See* Zalucki, *supra* note 24, at 149 (describing nature of quid pro quo sexual harassment claim). Quid pro quo sexual harassment is generally fairly noticeable. *See id.* at 149 n.10 (explaining quid pro quo exchange may be explicit exchange such as, "If you won't sleep with me, you won't get your promotion," or implicit exchange such as, "If you want the job, you have to do something 'nice' for me").

On the other hand, under the EEOC guidelines a hostile work environment claim arises when "such conduct [of a sexual nature] has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." 29 C.F.R. § 1604.11(a). Unlike the quid pro quo sexual harassment claim that requires the plaintiff to show a loss of economic benefit as a result of the plaintiff's refusal to give in to the sexual advances of the employer, the hostile work environment claim is not characterized by the loss of an economic benefit. *See* Zalucki, *supra* note 24, at 145 (noting hostile work environment claim is "more subtle"). A hostile work environment claim arises from conduct of a sexual nature based on either sex or gender. *See id.* (noting hostile work environment claim can be based on either sex or gender). A claim based on sex "involves conduct of a sexual nature, such as unwelcome touch, leering, innuendoes, crude jokes, or the display of explicit pictures." *Id.* Although there are different views as to what constitutes an "unwelcome touch," it is generally considered to include fondling, pinching, or brushing against another's body. *See id.* at 145 n.13 (defining unwelcome touch). On the other hand, a claim based on gender "involves conduct that is non-sexual, and detrimental to a woman as a member of a protected class." *Id.* at 145. Thus, claims based on gender involve conduct directed at aspects of identity or behavior related to stereotypes both of the different gender and their roles in society. *See id.* at 145 n.12 (defining gender and sex, explaining that sex is "reserved for anatomical identity, based on genitalia and physical secondary sex characteristics . . . [whereas] [t]he term gender is used to indicate aspects of identity of behavior related to both perception of self and social roles" (citations omitted)).

For a discussion of the arguments suggesting the distinctions between the quid pro quo and hostile work environment claims should be eliminated, see Barbara Verdonik, Comment, *Abolishing the Quid Pro Quo and Work Environment Distinctions in Sexual Harassment Cases Under the Civil Rights Act of 1964:* Vinson v. Taylor, 60 ST. JOHN'S L. REV. 177 (1985).

36. *See generally* Robinson v. City of Pittsburgh, 120 F.3d 1286, 1297-99 (3d Cir. 1997) (recognizing plaintiff may establish actionable claim under Title VII for sexual harassment).

37. *See id.* at 1296-97 (noting plaintiff can allege either quid pro quo sexual harassment or hostile work environment sexual harassment under Title VII).

38. 29 C.F.R. § 1604.11(a).

39. 120 F.3d 1286 (3d Cir. 1997).

the employee establishes that the "submission to [verbal or physical conduct of a sexual nature] is made either explicitly or implicitly a term or condition of [his or her] employment [or] submission to or rejection of such conduct . . . is used as the basis for employment decisions affecting [his or her employment]."[40] Furthermore, the plaintiff must show that the consequences attached to his or her response to the sexual advances alters his or her "compensation, terms, conditions, or privileges of employment," or "deprive[s] or tend[s] to deprive [him or her] of employment opportunities or otherwise adversely affect[s] [his or her] status as an employee."[41] As a result, it is not enough for the employer to engage in objectionable conduct; rather, the conduct must be severe enough to alter an employee's terms, conditions or privileges of employment in order for the plaintiff to have an actionable quid pro quo claim for sexual discrimination.[42] In addition, the plaintiff only has a valid claim for quid pro quo

40. *Id.* at 1296 (citing 29 C.F.R. § 1604.11(a)(1)-(2) (codifying guidelines adopted by EEOC for establishing quid pro quo sexual harassment claim under Title VII)). Prior to 1997, the United States Court of Appeals for the Third Circuit did not have an occasion to consider the elements of a quid pro quo claim. *See id.* (noting its issue of first impression). When finally faced with such an issue, the court in *Robinson* chose to adopt the guidelines formulated by the EEOC. *See id.* (noting circuit's adoption of EEOC guidelines). The EEOC guidelines are codified as follows:

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment [or] (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

29 C.F.R. § 1604.11(a)(1)-(2).

As the Third Circuit explained, under the federal regulations, a quid pro quo violation occurs the instant the employee is informed that his or her terms or conditions of employment (*i.e.*, compensation) is dependent on his or her submission to the sexual advances. *See Robinson*, 120 F.3d at 1297 (explaining that subsection (1) of C.F.R. § 1604.11(a) covers situations where employee is told before adverse employment decision that his or her response to sexual advances will affect terms, conditions or privileges of his or her employment). A violation occurs even if the employee submits to the sexual advances, or if employee rebuffs the sexual advances and the employer does not follow through on his threat. *See id.* (noting threat is sufficient to constitute discrimination with respect to compensation, terms, conditions or privileges of employment and is irrelevant whether employees' employment is actually affected by threat). In contrast, the *Robinson* court explained that under the federal regulations a quid pro quo violation does not occur until the plaintiff establishes that his or her response to the sexual advances was subsequently used as a basis for a decision about the terms or conditions of his or her employment. *See id.* (explaining subsection (2) of 29 C.F.R. § 1604.11(a) covers situations where employee's response to sexual advances is later used as basis for employment decision). For a further discussion of the EEOC guidelines, see *infra* note 46.

41. *Robinson*, 120 F.3d at 1296-97 (quoting 42 U.S.C. § 2000e-2(a)(1)-(2) (1994)).

42. *See id.* at 1297 (noting that not all objectionable conduct attributable to employer is sufficient to violate Title VII). The court points out that once the plaintiff establishes that verbal or physical conduct of a sexual nature constitutes

sexual harassment if the harasser had the actual or apparent authority to carry out the offer or threat that was made.[43]

In addition to establishing a violation of Title VII by proving a claim of quid pro quo sexual harassment, the Third Circuit also allows the plaintiff to establish a violation of Title VII by proving that sexual harassment created a hostile or abusive work environment.[44] To succeed in a sexual harassment claim based on a hostile work environment, the plaintiff must establish five elements that were adopted by the Third Circuit Court of Appeals in *Kunin v. Sears Roebuck Co.*[45] These elements are:

> (1) [plaintiff] suffered intentional discrimination because of [his or her] sex; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected [plaintiff]; (4) the discrimination would detrimentally affect a reasonable person of the same sex in that position; and (5) the existence of respondeat superior liability.[46]

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sexual harassment, the plaintiff must also show that the conduct was severe enough to violate Title VII. *See id.* at 1296-97 (discussing how plaintiff establishes his or her claim of sexual harassment). Under Title VII, conduct of a sexual nature constitutes an unlawful employment practice when the employer:

> (1) . . . discriminate[s] against any (2) individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex . . .; or (3) . . . limit[s], segregate[s], or classif[ies] his employees . . . in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's . . . sex . . . .

42 U.S.C. § 2000e-2(a)(1)-(2).

43. *See Robinson*, 120 F.3d at 1296 n.9 (noting employer is liable for quid pro quo sexual harassment by supervisor having actual or apparent authority); *see also* Craig v. Y&Y Snacks, Inc., 721 F.2d 77, 80 (3d Cir. 1983) (finding quid pro quo sexual harassment when supervisor with plenary authority dismissed plaintiff for refusing supervisor's sexual advances); Tomkins v. Public Serv. Elec. & Gas Co., 568 F.2d 1044, 1048-49 (3d Cir. 1977) (finding quid pro quo sexual harassment when supervisor responsible for evaluating plaintiff told her he expected her to have sexual relations with him).

44. *See* Kunin v. Sears Roebuck & Co., 175 F.3d 289, 293 (3d Cir. 1999) (explaining second actionable claim for sexual discrimination under Title VII).

45. 175 F.3d 289 (3d Cir. 1999).

46. *Id.* The EEOC has also established guidelines for hostile work environment sexual harassment. *See generally* 29 C.F.R. § 1604.11 (1985) (setting forth guidelines for proving Title VII sex discrimination claim based on hostile work environment). According to the EEOC, "verbal or physical conduct of a sexual nature constitutes sexual harassment when . . . such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." *Id.* § 1604.11(a)(3). Similar to the United States Court of Appeals for the Third Circuit's requirement of respondeat superior liability, the EEOC also only holds an employer liable for sexual harassment between fellow employees if "the employer knows or should have known of the conduct, [and the employer did not take] immediate and appropriate corrective action." *See id.* § 1604.11(d).

In order to establish the existence of respondeat superior liability, the plaintiff must prove that the employer knew or should have known of the harassment but failed to take prompt remedial action.[47]

III. JUSTICIABLE CASES: THE REQUIREMENT THAT PLAINTIFFS HAVE STANDING TO BRING SUIT

Unfortunately, despite Congress' attempt to eliminate sex discrimination by enacting Title VII, it is still prevalent in the workplace.[48] Arguably, sex discrimination continues to exist in the workplace because employers are not deterred from discriminating on the basis of sex because the employer knows that the female employee is unlikely to bring suit for fear of retaliation, and the male employee is unable to bring suit.[49] Although both men and women are able to file suit for sex discrimination under Title VII, courts are reluctant to grant men standing in a sex discrimination case when, although both men and women were injured, the discrimination was directed only at women.[50] Fundamentally, when a male plaintiff is denied standing, he is unable to maintain the suit in any of the courts of the United States.[51] To establish standing in a case before a

47. *See* Andrews v. City of Philadelphia, 895 F.2d 1469, 1486 (3d Cir. 1990) (explaining how plaintiff in hostile work environment sexual harassment claim establishes respondeat superior liability element); *see also Kunin*, 175 F.3d at 293 (noting employer is not always liable for hostile work environment).

48. *See* Zalucki, *supra* note 24, at 144 (noting sexual harassment is still prevalent in workplace).

49. *See* N. Morrison Torrey, *Indirect Discrimination Under Title VII: Expanding Male Standing to Sue for Injuries Received as a Result of Employer Discrimination Against Females*, 64 WASH. L. REV. 365, 365-67 (1989) (noting females are less likely than males to file suit and that federal circuits are split as to whether to give male employees, injured by discrimination, standing when discrimination is targeted only at female employees). According to recent empirical studies, women are less inclined than men to file suit when faced with discriminatory practices. *See id.* at 367 (noting men are more likely to file suit claiming discrimination). It has been suggested that women either totally ignore the sex discrimination or avoid filing suit for sex discrimination because they fear they will be retaliated against if they complain. *See* Zalucki, *supra* note 24, at n.3 (stating women may ignore problem or refuse to address problem for fear of possible repercussions from complaint of sexual harassment). Female victims of sex discrimination "express fears that [if they complain] they instead will be blamed, that they will be considered 'unprofessional,' or 'asking for it,' or told that this problem is too petty or trivial for a grown woman to worry about, and that they are blowing it all out of proportion." *Id.* (citing CATHERINE MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEXUAL DISCRIMINATION 49 (1979)).

50. *See* Torrey, *supra* note 49, at 365 (noting both men and women are able to seek redress for sex discrimination under Title VII; however, men are not always granted standing to sue for sex discrimination when discrimination is directed only at women).

51. *See, e.g.*, Valley Forge Christian College v. Americans United for Separation of Church & State, 454 U.S. 464, 475-76 (1981) ("Those who do not possess Art. III standing may not litigate as suitors in the courts of the United States."); Eric J. Kuhn, *Standing: Stood Up at the Courthouse Door*, 63 GEO. WASH. L. REV. 886,

federal court, the plaintiff must satisfy constitutional requirements as well as any judicially created prudential limitations.[52]

A. *Article III of the Constitution: Constitutional Requirements of Standing*

Article III of the Constitution states that "the judicial Power shall extend to all Cases, in Law and Equity, . . . [and] to Controversies."[53] To satisfy the "case or controversy" requirement of Article III, the plaintiff must establish that he or she has standing to bring the suit in question.[54] To establish constitutional standing, Article III requires that the party seeking to bring suit must show "at an irreducible minimum . . . 'that [he or she] personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' and that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision.'"[55]

The first Article III element requires that the plaintiff show that he or she has suffered an injury in fact.[56] To satisfy this requirement, the plaintiff must demonstrate that he or she has a direct stake in the litigation by showing either that he or she has suffered some direct economic injury or some non-economic, tangible injury.[57] For instance, the United States Su-

886 (1996) (noting federal courts will "dismiss even the most meritorious claim if a party lacks standing").

52. *See* Kuhn, *supra* note 51, at 886-87 (noting plaintiff is denied standing if he does not meet constitutional requirements of standing as well as prudential limitations). The plaintiff has the burden of establishing standing, by showing he suffered an injury in fact, namely, "an invasion of a legally protected interest which is (a) concrete and particularized and (b) 'actual or imminent, not conjectural or hypothetical.'" Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1991). The Court explained that "particularized" means "that the injury must affect the plaintiff in a personal and individual way." *Id.* at 560 n.1.

53. U.S. CONST. art. III, § 2, cl. 1.

54. *See* Kuhn, *supra* note 51, at 887 n.3 (noting standing is one of several "case or controversy" requirements). The question of standing is "whether the litigant is entitled to have the court decide the merits of the dispute." *Id.* at 887 n.2 (citation omitted). The other "case or controversy" requirements include: ripeness, mootness, advisory opinions and political questions. *See id.* at 887 n.3 (noting other "case or controversy" requirements).

55. *Valley Forge Christian College*, 454 U.S. at 472 (citations omitted).

56. *See* Kuhn, *supra* note 51, at 891-92 (noting first element of standing requires plaintiff to show that he or she suffered injury in fact).

57. *See id.* at 891-92 (noting injury in fact requirement can be satisfied by showing either economic injury or some less tangible injury); *see also* United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669, 686 (1973) (holding standing was not limited to plaintiffs showing economic harm). The United States Supreme Court, in *United States v. Students Challenging Regulatory Agency Procedures*, explained the purpose behind requiring that the plaintiff have an injury in fact:

> "Injury in fact" reflects the statutory requirement that a person be "adversely affected" or "aggrieved," and it serves to distinguish a person with a direct stake in the outcome of the litigation—even though small—from a person with a mere interest in the problem . . . . "The basic idea . . . is that an identifiable trifle is enough for standing to fight out a question of

preme Court has recognized standing where the plaintiff has claimed an aesthetic, environmental, recreational or social injury.[58] Courts deny standing, however, if the alleged injury is merely abstract, speculative or not particularized.[59]

The second Article III element, causation, requires that there be a causal connection between the injury and the action that the plaintiff is asking the court to adjudicate.[60] Specifically, the injury must be "fairly . . . trace[able] to the challenged action of the defendant."[61] Thus, if the injury is too "attenuated" and not "fairly traceable" to the defendant's conduct, the court will not recognize standing.[62]

The final Article III element, redressability, requires that the plaintiff's injury be redressable by a favorable decision.[63] The United States Supreme Court has fluctuated as to the degree of specificity required to fulfill this element.[64] On some occasions, the Court has required the plaintiff to show that "the injury will 'likely' be redressed if the requested relief is granted."[65] At other times, the Court has required the plaintiff to

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principle; the trifle is the basis for standing and the principle supplies the motivation."

Id. at 891 n.14 (citations omitted).

58. *See* Kuhn, *supra* note 51, at 892 (stating Supreme Court has granted standing where the alleged injury is non-economic (citing *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 392-93 (1988) (noting that plaintiff facing possible criminal prosecution may have standing to challenge criminal statute)); *Andrus v. Sierra Club*, 442 U.S. 347, 353 (1979) (concluding environmental group has standing due to alleged injury of recreational interests); *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 102-04 (1979) (concluding plaintiffs claiming social injuries resulting from discriminatory housing practices had standing); *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 73-74 (1978) (determining that aesthetic and environmental interests are sufficient to grant plaintiff standing); *Students Challenging Regulatory Agency Procedures*, 412 U.S. at 688-90 (concluding alleged environmental injury is sufficient to establish standing to sue as persons "adversely affected" or "aggrieved")).

59. *See Kuhn, supra* note 51, at 892 (setting forth situations where standing has been denied). The Court, in *Lujan v. Defenders of Wildlife*, stated that "some day" intentions, without any description of concrete plans, are too speculative, and therefore fail to support the "actual or imminent injury" element. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1991) (recognizing plaintiff must demonstrate actual or imminent injury in order for standing to be recognized).

60. *See Valley Forge Christian College*, 454 U.S. at 473 (recognizing causal element of Article III standing doctrine).

61. *Lujan*, 504 U.S. at 560 (quoting *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)).

62. *See, e.g.*, Allen v. Wright, 468 U.S. 737, 758 (1984) (failing to recognize standing, claiming "relationship between the IRS's grant of tax exemptions and the schools' conduct was 'attenuated at best'").

63. *See Lujan*, 504 U.S. at 561 (noting redressability requirement of standing). The plaintiff's injury is redressable if a favorable decision will remove or remedy the injury. *See* Kuhn, *supra* note 51, at 893 (recognizing injury must be redressable by favorable judicial decision before court will recognize standing).

64. *See* Kuhn, *supra* note 51, at 893 (noting Court has applied different tests to determine redressability).

65. *Id.*

show that a "substantial likelihood exists that her injury will be remedied through a favorable decision."[66] No matter which standard the Court follows, it will never speculate on whether the plaintiff's injury would be remedied by a favorable decision.[67]

B. *Prudential Limitations to Article III Standing Requirements*

In addition to Article III constitutional requirements, the plaintiff may need to satisfy a set of judicially imposed prudential limitations.[68] The United States Supreme Court has refused to recognize standing where: (1) the plaintiff is asserting the legal rights or interests of another; (2) the case involves "abstract questions of wide public significance which amount to 'generalized grievances' pervasively shared;" and (3) the complaints do not fall within the "zone of interests" protected by the challenged legislation.[69] Because the prudential limitations are not rooted in

66. *Id.*

67. *See id.* (explaining Court will not speculate on whether injury is redressable); *see also Lujan*, 504 U.S. at 561 (holding it must be "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision'").

68. *See* Kuhn, *supra* note 51, at 894 (noting plaintiff may need to satisfy prudential requirements to have standing to bring suit).

69. *See* Torrey, *supra* note 49, at 371 (describing prudential limitations to standing imposed by United States Supreme Court) (citations omitted). Courts have enacted these prudential limitations "to 'avoid deciding questions of broad social import where no individual rights would be vindicated and to limit access to the federal courts to those litigants best suited to assert a particular claim.'" Kuhn, *supra* note 51, at 894 (quoting *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 99-100 (1979) (granting standing to plaintiff challenging discriminatory housing practices under Title VIII, which grants standing to any person aggrieved)).

Under the first prudential limitation, the courts have refused to confer standing on an individual attempting to assert jus tertii, or the legal rights or interests of another. *See* Torrey, *supra* note 49, at 371 (noting courts do not recognize third-party standing). In a limited exception, however, the courts have recognized standing when an association attempts to bring an action on behalf of its member. *See* Kuhn, *supra* note 51, at 894 (noting courts grant third-party standing in limited circumstances). The Court has recognized such third-party standing if and only if the following three conditions are met: "(1) a member of the organization would have had standing as an individual; (2) the alleged interests are germane to the association's purpose; and (3) neither the claim asserted nor the relief requested requires the presence of an individual member." *Id.*

Under the second prudential limitation, the court will not confer standing on an individual merely asserting a generalized grievance. *See id.* at 895 (noting courts are reluctant to hear generalized grievances). Generalized grievances are "'abstract questions of wide public significance' which amount to 'generalized grievances,' pervasively shared and most appropriately addressed in the representative branches." Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 465 U.S. 464, 475 (1981) (quoting *Warth v. Seldin*, 422 U.S. 490, 499-500 (1975)); *accord Lujan*, 54 U.S. at 574 (stating private citizen does not have standing to file suit when "plaintiff has [asserted] only the right, possessed by every citizen" (citing *Fairchild v. Hughes*, 258 U.S. 126, 129-30 (1922))). In determining whether the plaintiff has standing, the court must be careful to distinguish between a plaintiff who is merely seeking relief for a generalized grievance and a plaintiff who is seeking relief for an injury that has also been suffered by many other individuals. *See* Kuhn, *supra* note 51, at 895 (noting "Court's refusal

the Constitution, Congress has wide latitude to override the judicially imposed prudential standing requirements and bestow standing on any individual meeting the minimum constitutional standing requirements.[70] If Congress has not exercised this power to override the prudential limitations by enacting legislation that restores standing to the full extent permitted by Article III, however, then the plaintiff must satisfy both the constitutional and the prudential standing requirements.[71]

C. *Standing in The Third Circuit*

In *Powell v. Ridge*,[72] the United States Court of Appeals for the Third Circuit set forth its standing requirements.[73] The Third Circuit began by explaining that in order to have standing, the plaintiff must meet the basic Article III requirements; therefore, the plaintiff *must* show "(1) an actual injury that is (2) causally connected to the conduct complained of and (3) likely to be 'redressed by a favorable decision.'"[74] Furthermore, the Third

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to serve 'as a forum in which to air . . . generalized grievances' should be distinguished from situations in which a large group of people share the same injury" (citing *Flast v. Cohen*, 392 U.S. 83, 106 (1968))). The United States Supreme Court has stated that although standing is denied to individuals seeking relief for a generalized grievance, standing will not be denied to an individual who has in fact suffered an injury even though many people also suffer from the same injury. *See* United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669, 687-88 (1973) (refusing to deny standing to individuals suffering same injury as many other individuals, reasoning that "[t]o deny standing to persons who are in fact injured simply because many others are injured, would mean that the most injurious and widespread Government actions could be questioned by nobody").

The final prudential limitation imposed by the court is the zone of interest test. *See* Kuhn, *supra* note 51, at 895 (noting plaintiff must also satisfy the zone of interest test to have standing to sue). To satisfy this element, the "interest sought to be protected by the complainant . . . [must be] arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." Association of Data Processing Serv. Org. v. Camp, 397 U.S. 150, 153 (1969). To satisfy this test, the plaintiff must make an affirmative showing that he was an "intended beneficiary of Congress's statute." Kuhn, *supra* note 51, at 895.

70. *See* Leroy D. Clark, *Employment Discrimination Testing: Theories of Standing and a Reply to Professor Yelnosky*, 28 U. MICH. J.L. REFORM. 1, 9 (1994) (recognizing Congress can require courts to disregard prudential limitations); Jordan, *supra* note 21, at 141 (noting Congress may confer standing on any plaintiff meeting constitutional standing requirements even if prudential standing requirements are not met); Torrey, *supra* note 49, at 371 (same). Congress can enact legislation that restores standing to the full extent permitted by Article III either "explicitly" in a statutory provision conferring a private cause of action or "implicitly" by granting standing to any person "claiming to be aggrieved." *See* Jordan, *supra* note 21, at 141 (noting that Congress may overrule court-imposed prudential limitations).

71. *See* Jordan, *supra* note 21, at 141 (explaining plaintiff must satisfy both prudential and constitutional limitations if Congress has not legislatively overruled prudential limitations).

72. 189 F.3d 387 (3d Cir. 1999).

73. *See id.* at 403-05 (stating United States Court of Appeals for the Third Circuit's interpretation of standing).

74. *Id.* at 403 (citing *Lujan*, 504 U.S. at 560-61 (establishing test that must be satisfied for plaintiff to have standing)). Following Supreme Court precedent, the

Circuit explained that the plaintiff *might* also need to meet the prudential standing requirements.[75] Congress may, however, legislatively direct that standing under a particular act be limited only by Article III requirements.[76] When Congress drafts such legislation, the Third Circuit believes plaintiffs are free to disregard the court-imposed prudential limitations and "seek relief on the basis of the legal rights and interests of others, and . . . may invoke the general public interest" to support their claim.[77]

D. *Standing Requirements in Title VII Cases*

Section 706(b) of Title VII grants individuals a private right of action against his or her employer for alleged discrimination in employment.[78] As in all other cases brought in the courts in the United States, the plaintiff must have standing in order to bring the Title VII claim against his or her employer. To have standing to bring such a suit, Title VII requires that the plaintiff is a "person claiming to be aggrieved."[79] Title VII does

court explained that the injury must consist of "an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Id.* (citing *Lujan*, 504 U.S. at 560 (explaining test plaintiff must satisfy to have requisite injury)).

75. *See id.* at 404 (explaining courts require plaintiffs to satisfy certain prudential limitations in effort "to avoid deciding questions of broad social import where no individual rights would be vindicated"). The United States Court of Appeals for the Third Circuit has adopted the zone of interest limitation, and takes the view that standing is designed to ensure that the "interest sought to be protected by the [plaintiff] is arguably within the zone of interests to be protected or regulated by the statute in question." Rosen v. Public Serv. Elec. & Gas Co., 477 F.2d 90, 94 (3d Cir. 1972) (quoting *Association of Data Processing Serv. Org. v. Camp* 397 U.S. 150, 153 (1969) (explaining zone of interest test)).

76. *See Rosen*, 477 F.2d at 94 (noting that in certain instances Congress directs courts to disregard prudential limitations when determining whether plaintiff has standing to sue).

77. Fair Housing Council v. Montgomery Newspapers, 141 F.3d 71, 75 (3d Cir. 1998).

78. *See* 42 U.S.C. § 2000e-5(b) (1994) (granting power to "a person claiming to be aggrieved" to file charges "alleging that an employer . . . has engaged in an unlawful employment practice"). Under Title VII, "a person claiming to be aggrieved" can file charges with the EEOC and, after the proceedings by the EEOC have continued for a certain period of time, the person may file suit. *See id.* § 2000e-5(b) & (e) (noting aggrieved person must first file charges with EEOC and if after 180 days from filing of such charge EEOC has not filed civil action, then aggrieved person may file suit).

79. 42 U.S.C. § 2000e-5(b). Before an individual may bring a Title VII claim, he or she must meet the statutory requirements and constitutional standing requirements. *See* Jacobson, *supra* note 22, at 105 (noting plaintiff must have standing to bring Title VII claim). As for the statutory requirements, the individual must be a "person claiming to be aggrieved." 42 U.S.C. § 2000e-5(b). In addition, the individual must meet the statute's procedural requirements, which include filing a timely charge with the EEOC after the alleged unlawful employment practice occurred and filing a timely action after receiving a notice of right to sue. *See id.* § 2000e-5(b) & (e) (stating statutory requirements for standing in Title VII suit); *see also* Jacobson, *supra* note 22, at 105 (discussing Title VII procedural requirements that employee must satisfy in order to have standing).

not define "a person claiming to be aggrieved," and the courts have struggled to define the term for themselves.[80] The circuit courts have typically interpreted the "person claiming to be aggrieved" requirement broadly in direct discrimination cases in order to grant standing to the fullest extent permissible under Article III.[81] The United States Court of Appeals for the Third Circuit in *Hackett v. McGuire Brothers*[82] exemplified the circuits' broad approach to standing when it stated that "[a]n aggrieved person . . . [under Title VII] is any person aggrieved by any of the forbidden practices."[83] The courts disagree, however, regarding how broadly to define standing when the plaintiff is claiming indirect discrimination.[84]

1. *How the Courts of Appeals Define Standing in Title VII Cases Where a White Employee Is Seeking Redress for Discrimination Against a Minority Employee*

The circuit courts that have dealt with this issue unanimously agree that a white employee has standing to protest alleged racial discrimination against non-white employees by the employer.[85] For instance, the United States Court of Appeals for the Ninth Circuit in *Waters v. Heublein*[86] granted a white woman standing to sue to enjoin racial discrimination against Black and Hispanic-American employees.[87] According to the

80. *See* Jordan, *supra* note 21, at 137 (noting courts have struggled to define "persons aggrieved").

81. *See Title VII—Standing—Fourth Circuit Denies Standing to White Men Advancing Claim of Hostile Environment Due to Discrimination Against Co-Workers*—Childress v. City of Richmond, 112 HARV. L. REV. 725, 725 (1999) (recognizing that courts interpret "person claiming to be aggrieved" broadly to grant standing to fullest extent permissible under Title VII). Direct discrimination occurs when the person claiming to be aggrieved was the target of the discrimination. *See* Torrey, *supra* note 49, at 365 (noting both men and women have standing to seek redress under Title VII for injuries they suffer because of direct discrimination).

82. 445 F.3d 442 (3d Cir. 1971).

83. *Id.* at 445 (holding that if plaintiff was discriminated against based on race then he is aggrieved).

84. *See* Torrey, *supra* note 49, at 365 (noting circuit split). Indirect discrimination is "discrimination directed towards one group that indirectly injures a person not a member of that group." Mary-Alice Brady, Note, *White Males Have Standing to Bring Hostile Environment Claims for Discrimination Directed Towards Black and Female Coworkers:* Childress v. City of Richmond, 39 B.C. L. REV. 423, 423 n.6 (1998) (citing *Waters v. Heublein, Inc.*, 547 F.2d 466, 469 (9th Cir. 1976) (recognizing white employee's standing to sue for discrimination towards minority co-workers)).

85. For a further discussion of the courts that have granted white plaintiffs standing to sue for discrimination towards minorities, see *infra* notes 86 -112 and accompanying text.

86. 547 F.2d 466 (9th Cir. 1976).

87. *See id.* at 469 (holding white employee has standing to sue to enjoin discrimination against Black and Hispanic-American employees). In this case, the employee filed an action under Title VII alleging that her employers engaged in discriminatory employment practices against women, Blacks and Spanish-surnamed Americans. *See id.* at 467. Specifically, she claimed women and minorities were discriminated against by being hired in "low-pay and low-status work compared to men." *Id.*

court, the employee had standing to sue for racial discrimination aimed at minority employees because the term "person aggrieved" includes persons who are injured by the loss of important benefits from interracial associations.[88] In support of their conclusion that the white employee had standing to sue for racial discrimination aimed at minority employees, the court relied on the United States Supreme Court decision in *Trafficante v. Metropolitan Life Insurance Co.*[89]

In *Trafficante*, a white tenant brought suit against an apartment complex under Title VIII of the Fair Housing Act ("Title VIII") in an attempt to end racially discriminatory rental polices aimed at non-whites.[90] The Supreme Court granted the white tenants standing to sue and held that standing is recognized in all tenants in a housing complex who are injured by racial discrimination in the management of the housing facilities.[91] Relying on the Third Circuit's decision in *Hackett*, the Court concluded that the words used in Title VIII to define a "person aggrieved" show "a congressional intention to define standing as broadly as is permitted by Article III of the Constitution."[92] Therefore, the Court concluded the white tenants qualify as "persons aggrieved" by the discriminatory practices because the exclusion of minority persons from the housing complex interferes with the "benefits [they would have received] from interracial associations."[93] As a result, the white tenants had standing because, although not the direct objects of the discrimination, they too suffered from the racial discrimination.[94] Believing that the scope of Title VII and Title VIII were comparable, the Ninth Circuit Court of Appeals concluded that *Waters* was "logically indistinguishable" from *Trafficante* and applied the

88. *See id.* (granting employee standing to sue to redress racial and ethnic discrimination).

89. 409 U.S. 205 (1972).

90. *See id.* at 206-07.

91. *See id.* at 212 (granting tenants in housing units alleging indirect discrimination standing to sue).

92. *Id.* For a discussion of *Hackett*, see *infra* notes 159-64 and accompanying text. Title VIII defines an "aggrieved person" as "any person who claims to have been injured by a discriminatory housing practice." 42 U.S.C. § 3602(i)(1) (1994). According to the United States Supreme Court, this "broad and inclusive language" granted standing to tenants of the housing unit that was charged with discrimination because those tenants "who were not the direct objects of discrimination [also] had an interest in ensuring fair housing, as they too suffered." *Trafficante*, 409 U.S. at 209-10. The Court argued that granting standing to individuals, who claim discriminatory housing practices "affects 'the very quality of their daily lives,'" and furthers the purpose of Title VIII. *See id.* at 211 (noting Title VIII will not effectively eliminate discrimination in housing practices if all individuals suffering from discriminatory practices are not granted potential redress).

93. *Trafficante*, 409 U.S. at 209-10.

94. *See id.* at 210 (recognizing indirect racial discrimination in housing practices).

Supreme Court's rationale to the Title VII case, granting white individuals "aggrieved" status in race discrimination cases.[95]

Shortly after the *Waters* decision, the United States Court of Appeals for the Sixth Circuit reached a similar decision in *EEOC v. Bailey Co.*[96] In *Bailey*, a white employee protested racially discriminatory hiring practices by her employer that affected black employees.[97] The Sixth Circuit concluded that *Trafficante* requires the courts to give a broad interpretation to the language "a person claiming to be aggrieved."[98] Specifically, the Sixth Circuit held that white employees who may suffer from the lack of association with minorities at work have standing to seek redress for racial discrimination aimed at non-white employees.[99] Comparing the statutory

95. *See* Waters v. Heublin, 547 F.2d 466, 469-70 (9th Cir. 1976) (applying holding from *Trafficante* and concluding that white individuals have standing to sue for racially discriminatory practices aimed at minorities). In support of its holding, the United States Court of Appeals for the Ninth Circuit explained:

> [I]nterpersonal contacts between members of the same or different races are no less a part of the work environment than of the home environment. Indeed, in modern America, a person is as likely, and often more likely to know his fellow workers than the tenants next door or down the hall. The possibilities of advantageous personal, professional, or business contacts are certainly as great at work as at home. The benefits of interracial harmony are as great in either locale.

Id. at 469.

The court believed that the scope of Title VII and Title VIII were comparable because both Acts were intended to end discriminatory practices. *See id.* (rejecting lower court's conclusion that Title VII's scope was narrower than scope of Title VIII). The court explained that Title VII attempts to end discrimination in the workplace by providing equal opportunities to all employees, whereas Title VIII attempts to end discrimination in housing practices by forbidding segregation. *See id.* (noting congressional intent for enacting Title VII and Title VIII). The Ninth Circuit concluded by explaining that "[t]he distinction between laws aimed at desegregation and laws aimed at equal opportunity is illusory. These goals are opposite sides of the same coin." *Id.*

96. 563 F.2d 439 (6th Cir. 1977).

97. *See id.* at 442. In this case, the employee alleged her employer "failed 'to promote females to supervisory positions because of their sex,' that the company failed 'to pay equally qualified females the same wages as males,' and that the company failed 'to recruit and hire Negro females because of their race.'" *Id.* After concluding the employer was not guilty of sex discrimination, the EEOC dropped the employee's sex discrimination claims but eventually brought suit alleging racial discrimination. *See id.* The employee sought to have the case dismissed on the grounds that the employee did not have standing because the discrimination was not directed at her. *See id.* at 446 (explaining employer's argument).

98. *See id.* at 452 (stating that court would be inclined to agree with employer's argument that employee did not have standing if Supreme Court holding in *Trafficante* were not controlling authority). For a discussion of why the Sixth Circuit felt compelled to follow *Trafficante*, see *infra* notes 99-100 and accompanying text.

99. *See Bailey*, 563 F.2d at 453 (granting white employees standing in indirect discrimination cases). The Sixth Circuit explained that there were several reasons that required them to follow *Trafficante*'s lead and grant white employees standing in indirect discrimination cases. *See id.* (noting several reasons why *Trafficante* requires holding that white employees who may have suffered from loss of benefits

from lack of association with racial minorities at work have standing in Title VII cases). First, the court argued that because both Title VII and Title VIII use the language "a person aggrieved" to define who has standing to sue, and because both acts are civil rights acts, it must be presumed that Congress intended the similar language to have the same meanings. *See id.* at 452-53 (concluding similar language in Title VII and Title VIII suggests congressional intent to give such similar language same construction). Thus, because *Trafficante* construed the definition of "a person claiming to be aggrieved" in Title VIII as granting standing to any individual claiming to be injured by discriminatory purposes regardless of whether the charging party is a member of the group discriminated against, the Sixth Circuit concluded the same broad definition had to be applied in Title VII cases. *See id.* (following *Trafficante* and broadly defining standing in Title VII cases); *see also* Clayton v. White Hall Sch. Dist., 875 F.2d 676, 679-80 (8th Cir. 1989) (adopting broad definition of "person aggrieved" and concluding white individuals may have standing to raise claim of racial discrimination even when discrimination was aimed at minorities); Stewart v. Hannon, 675 F.2d 846, 848-50 (7th Cir. 1982) (same); EEOC v. Mississippi College, 626 F.2d 477, 483-84 (5th Cir. 1980) (same); *Waters*, 547 F.2d at 469 (same).

Second, the Sixth Circuit referred to the similarities in the design of the acts and argued that such similarities further supported the conclusion that *Trafficante* must control the issue of standing in discrimination claims under Title VII. *See Bailey*, 563 F.2d at 453 (noting similarities in design). Specifically, the Sixth Circuit noted that beyond the use of the language "person aggrieved," both Acts also include a list of practices deemed discriminatory and both Acts establish similar enforcement procedures. *See id.* (discussing similarities of Acts). *Compare* 42 U.S.C. §§ 3601-3610 (1994) (describing certain practices deemed discriminatory and establishing enforcement procedures to deal with violations of Act), *with* 42 U.S.C. §§ 2000e-2 to 2000e-5 (1994) (same). The Sixth Circuit argued that the one difference between the designs, (Title VII authorizes the EEOC to bring public suits to enforce Title VII, but the Secretary of Housing and Urban Development ("HUD") does not have a similar power under Title VIII) is unimportant. *See Bailey*, 563 F.2d at 453 (arguing that public enforcement power granted to EEOC but denied HUD is not sufficient reason to give different meanings to "person aggrieved"); *see also Waters*, 547 F.2d at 469 (concluding in significant that EEOC has enforcement powers under Title VII but HUD does not have similar powers under Title VIII). The Sixth Circuit explained that prior to the 1972 amendment of Title VII, the designs of Title VII and Title VIII were identical. *See Bailey*, 563 F.2d at 453 (reiterating fact that Title VII and Title VIII are similar). It was not until the 1972 amendment that the public enforcement power was added to Title VII. *See id.* (noting changes). By adding the public enforcement power, Congress intended to expand the coverage of and increase the compliance with the law, not to narrow the class of individuals capable of bringing suit. *See id.* (stating Congress' intent for amending Title VIII (citing H.R. REP. NO. 92-238, at 4-5, *reprinted in* 1972 U.S.C.C.A.N. 2137, 2179 (1963))); *see also Waters*, 547 F.2d at 470 (noting that by amending Title VII, Congress did not intend to narrow class of plaintiffs who might bring suit). As further support of their decision to follow *Trafficante*, the Sixth Circuit argued that the strong similarities between the purposes and effects of Title VII and Title VIII requires it to construe the language "person aggrieved" in the same manner as construed by *Trafficante*. *See Bailey*, 563 F.2d at 453-54 (noting both Title VII and Title VIII were enacted to end discrimination and both affect housing patterns and employment practices, thereby increasing interracial contact); *see also Stewart*, 675 F.2d at 848-49 (concluding similarities in purposes of two Acts requires that phrase "a person claiming to be aggrieved" is interpreted in same manner as *Trafficante* interpreted term "aggrieved person"); *Mississippi College*, 626 F.2d at 482 (same); *Waters*, 547 F.2d at 469 (same).

Perhaps the two most important reasons the Sixth Circuit offered for following *Trafficante* are that the Supreme Court relied on *Hackett*, a Title VII case con-

language of Title VII with the statutory language of Title VIII, which both confer standing on an individual who is aggrieved, the Sixth Circuit concluded that Congress must have intended such similar language to have the same meanings.[100] Therefore, because the Supreme Court defines "aggrieved person" under Title VIII as broadly as permitted under Article III, the Sixth Circuit concluded that standing should also be defined broadly under Title VII.[101]

In subsequent years, other circuits joined the Sixth and Ninth Circuits and granted standing to white employees alleging racial discrimination when the discrimination was directed at minority workers.[102] Moreover, in following the decisions from the Sixth and Ninth Circuits, these courts addressed an issue that the Sixth and Ninth Circuits failed to consider.[103]

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struing standing in and also that a conclusion consistent with *Trafficante* is also consistent with the EEOC's interpretation of Title VII. *See Bailey*, 563 F.2d at 453 (explaining why *Trafficante* is controlling precedent). The United States Court of Appeals for the Third Circuit in *Hackett* held that the language "a person claiming to be aggrieved" indicated congressional intent to define standing under Title VII as broadly as Article III allows. *See* Hackett v. McGuire Bros., 445 F.2d 442, 446 (3d Cir. 1971) (defining standing broadly thereby requiring plaintiff to satisfy Article III standing requirements). The *Bailey* court argued that since *Trafficante* approved the reasoning of *Hackett*, the Supreme Court must equate Title VII and Title VIII on the issue of standing and define standing broadly in suits brought under each Act. *See Bailey*, 563 F.2d at 453 (concluding that under both Titles VII and VIII "a person can be aggrieved from the loss of benefits from the lack of interracial associations"). This interpretation of the Supreme Court's view of standing in Title VII is consistent with the EEOC's reading of Title VII. *See id.* at 453-54 (noting EEOC interpretation of Title VII). Like *Trafficante*, the EEOC defines standing broadly and confers standing upon any individual "aggrieved" by discriminatory practices. *See id.* (noting similarities between Supreme Court's view of standing and EEOC's view). The EEOC interprets Title VII as granting every individual "the right to work in an environment free from unlawful discrimination." *Id.* at 454 (noting EEOC's view of standing under Title VII). Consistent with this interpretation, the EEOC has continuously held that white employees have standing to file charges with the EEOC and to sue because of discrimination against black employees. *See id.* (noting that although EEOC interpretations are not controlling, it is important to consider such interpretations when EEOC has consistently and persuasively interpreted Title VII in same manner).

100. *See Bailey*, 563 F.2d at 452-53 (concluding that similarities in statutory language, particularly use of "person claiming to be aggrieved" in Title VII and use of "person aggrieved" in Title VIII, suggests Congress intended both phrases to have same meaning).

101. *See id.* (adopting *Trafficante's* interpretation of standing).

102. *See generally Clayton*, 875 F.2d at 679-80 (conferring standing to white employee alleging racial discrimination that was aimed at minority employees); *Stewart*, 675 F.2d at 849-50 (declaring white woman "a person aggrieved" and granting her standing to sue for racial discrimination against non-whites); *Mississippi College*, 626 F.2d at 483 (granting white employee standing to file charge asserting racial discrimination against blacks provided employee meets Article III standing requirements).

103. *Compare Stewart*, 675 F.2d at 849-50 (declaring white woman "a person aggrieved" and granting her standing to sue for racial discrimination against non-whites even though she did not allege loss of interracial associations), *with Bailey*, 563 F.2d at 452 (claiming white individual is "a person claiming to be aggrieved"

In granting standing to white employees to sue for discrimination aimed at minority employees, the Sixth and Ninth Circuits explained that white employees were entitled to sue for racial discrimination to redress their loss of important benefits from lack of interracial associations.[104] The Sixth and Ninth Circuits never considered, however, whether a white individual has standing to bring a suit alleging racial discrimination when the discrimination was aimed at racial minorities, and the employee did not allege a deprivation of his or her benefits from interracial associations.[105] The United States Court of Appeals for the Seventh Circuit answered this question *Stewart v. Hannon* .[106] In *Stewart*, the plaintiff alleged racial discrimination against minorities in awarding promotions; she did not, however, allege that the discrimination deprived her of benefits from interracial associations.[107] The Seventh Circuit granted the plaintiff standing even though she did not allege a loss of interracial associations.[108] The Seventh Circuit explained that the exclusion of minority workers from the work environment creates a *potential* for the loss of interracial associations.[109] This potential loss is sufficient to confer standing.[110] In so holding, the Seventh Circuit expanded the range of potential plaintiffs in racial discrimination cases under Title VII. In a comparable case several years later, the United States Court of Appeals for the Eighth Circuit further extended the range of possible plaintiffs in *Clayton*

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because "she may have suffered from loss of benefits from the lack of association with racial minorities at work"), *and Waters*, 547 F.2d at 469-70 (granting white employee standing to redress racial discrimination aimed at minorities arguing as support for their conclusion that ability to maintain interpersonal contacts between members of different races is vital to work environment).

104. For a further discussion of the Sixth and Ninth Circuits' view that white employees are entitled to sue for racial discrimination to redress their loss of important benefits from lack of interracial associations, see *supra* notes 85-88, 96-100 and accompanying text.

105. For a further discussion of the Sixth and Ninth Circuits' holdings, see *supra* notes 85-100 and accompanying text.

106. 675 F.2d 846 (7th Cir. 1982).

107. *See id.* at 847-48 (stating facts of case).

108. *See id.* at 849-50 (granting standing to white plaintiff to sue for racial discrimination aimed at minority employees).

109. *See id.* at 850 (noting exclusion of racial minorities *can* lead to loss of interracial minorities).

110. *See id.* (concluding specific injury need not be pled to confer standing and holding that complaint alleging that plaintiff worked in environment subject to racial discrimination is sufficient to confer standing); *see also* Clayton v. White Hall Sch. Dist., 875 F.2d 676, 679-80 (8th Cir. 1989) (quoting *Parham v. Southwestern Bell Tel. Co.*, 433 F.2d 421, 425 (8th Cir. 1970), which granted white employee standing to sue for racial discrimination aimed at minority workers, basing its decision on idea that white employee's interest in work environments free of racial discrimination is within zone of interest protected by Title VII); EEOC v. Mississippi College, 626 F.2d 477, 483 (5th Cir. 1980) (granting white employee standing to sue for racial discrimination aimed at minority employees, basing decision on idea that white employee may seek redress for violations of his or "her own personal right to work in an environment unaffected by racial discrimination").

v. White Hall School District.[111] The Eighth Circuit concluded that white employees have standing to sue for racial discrimination because their interest in working in an environment free of racial discrimination is within the zone of interests protected by Title VII, specifically "to eliminate the inconvenience, unfairness, and humiliation of racial discrimination."[112]

2. *How the Circuits' View of Standing Differs When a Male Employee Is Seeking Redress for Sex Discrimination Directed at Female Employees*

The circuit courts have not been as prepared to define standing broadly when a case deals with a male employee seeking to enjoin sex discrimination aimed at female employees.[113] For example, the United States Court of Appeals for the Ninth Circuit refused to extend the broad definition of standing granted to white employees in race discrimination cases to male employees seeking to redress sex discrimination in *Patee v. Pacific Northwestern Bell Telephone Co.*[114] According to the Ninth Circuit, male employees cannot assert the rights of their female associates.[115] Consequently, the Ninth Circuit concluded that standing will not be recognized unless the male employee claims that he was directly discriminated against because he is a male.[116]

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111. 875 F.2d 676 (8th Cir. 1989).

112. *Id.* at 679-80.

113. For a further discussion of the circuits' reluctance to grant standing to a male suing for sex discrimination aimed at his female co-workers, see *infra* notes 114-27 and accompanying text.

114. 803 F.2d 476, 479 (9th Cir. 1986). For a discussion of the Ninth Circuit's view on standing in Title VII claims based on racial discrimination, see *supra* notes 85-95 and accompanying text.

115. *See id.* at 478 (stating that men cannot assert rights of their female co-workers to be free from discrimination based on sex).

116. *See id.* (refusing to grant male employees standing because they did not allege that they were discriminated against because they were male). In *Patee*, the plaintiffs, who were a group of male employees employed in a position predominately held by females, claimed that their employer refused to grant them a pay increase because the employer discriminated against women. *See id.* at 476-77. Refusing to grant the plaintiffs standing, the court explained that a male employee can not assert the right of his female co-worker to be free from sex discrimination. *See id.* at 478 (denying standing to plaintiffs asserting sex discrimination when discrimination is aimed at female employees). Thus, the court concluded that unless a male employee brings a sex discrimination case alleging that he was discriminated against because he was a man, he does not have standing to bring a sex discrimination suit under Title VII. *See id.* (same). In explaining its decision, the Ninth Circuit distinguished *Waters* and *Trafficante* from the present case. *See id.* (noting differences). The *Patee* court explained that this case was different from the *Trafficante* and *Waters* cases because here the male employees did not allege that the sex discrimination deprived them of the benefits of interpersonal contacts with women. *See id.* at 478-79 (noting that "[t]he serious consequences that flow from the exclusion of persons because of discrimination in housing and in hiring are not present here").

In a more recent case, *Childress v. City of Richmond*,[117] the United States Court of Appeals for the Fourth Circuit denied standing to a group of white men who alleged that disparaging remarks made to and about female co-workers created a hostile work environment in violation of Title VII.[118] According to the Fourth Circuit, in order to qualify as a person aggrieved, the "plaintiff must be a member of the class of direct victims [discriminated against] . . . , that is, the plaintiff must assert his own statutory rights and allege that he, not someone else has been discriminate[d] against. . . ."[119] In so holding, the Fourth Circuit, as well as the Ninth Circuit, concluded that *Trafficante* is not controlling precedent in sex discrimination cases under Title VII.[120]

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117. 134 F.3d 1205 (4th Cir. 1998).

118. *See id.* at 1206-08 (stating facts of case).

119. *Id.* at 1209. According to the court, the phrase "aggrieved person" has historically been "a 'term of art' ordinarily understood to mean those persons who could satisfy *both* prudential *and* constitutional standing limitations." *Id.* at 1208; *see* Director, Office of Worker's Compensation Programs v. Newport News, 514 U.S. 122, 126 (1995) (recognizing phrase "'person adversely affected or aggrieved' is a term of art used by statutes to designate those who have standing"). Congress can override the prudential standing requirements by defining the term "aggrieved person" differently in the statute. *See Childress*, 134 F.3d at 1208-09 (noting that default rule that Congress has granted standing only to those who meet both constitutional and prudential standing requirements applies unless Congress specifically redefines standing); *see also* Jordan, *supra* note 21, at 139 n.26 (noting courts are required to apply term of art definition unless term is defined differently by Congress). Because Title VII failed to define the term "a person claiming to be aggrieved," the *Childress* court concluded that Congress intended to use the term of art "aggrieved person." *See Childress*, 134 F.3d at 1210 (finding congressional intent to use term of art "aggrieved person" in Title VII). Therefore, in the Fourth Circuit, a plaintiff bringing a sex discrimination claim under Title VII will not qualify as an "aggrieved person" unless he or she meets both constitutional and prudential limitations. *See id.* at 1209 (concluding that plaintiff cannot assert rights of others).

120. *See Childress*, 134 F.3d at 1209-10 (quoting *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 206 (1972) (noting that Title VII has different standing requirements than Title VIII)); *Patee*, 803 F.2d at 478 (stating *Trafficante* has no application in sex discrimination cases under Title VII). In refusing to apply the *Trafficante*'s broad definition of standing to Title VII, the United States Court of Appeals for the Fourth Circuit noted that Title VIII defined the term "aggrieved person" for the purposes of the statute. *See Childress*, 134 F.3d at 1209 (noting Title VIII defines "aggrieved person" as "any person who claims to have been injured by a discriminatory housing practice"). Therefore, the United States Supreme Court in *Trafficante* interpreted the term not as a term of art but as a statutorily defined term. *See id.* (suggesting phrase "aggrieved person" is used as term of art in Title VII but used as statutorily defined term in Title VIII). Because Title VIII statutorily defines the term "aggrieved person" and Congress failed to define the term in Title VII, the Fourth Circuit argued that the absence of a definition in Title VII supports their view that standing should not be defined broadly in Title VII, but rather should be narrowly construed to include prudential standing requirements. *See id.* at 1210 (requiring that individuals bringing Title VII claim meet both constitutional and prudential limitations). Specifically, the Fourth Circuit argued that the complete absence of a definition of the term in Title VII, coupled with a statutory definition of the term in Title VIII, suggests congressional intent to define the

Not all courts take such a narrow view of "a person claiming to be aggrieved" in sex discrimination cases under Title VII.[121] For instance, in *Allen v. American Home Foods, Inc.*,[122] the United States District Court for the Northern District of Indiana recognized that male plaintiffs have standing to bring suit claiming sex discrimination, even though the discrimination was directed at women.[123] In *Allen*, the plaintiffs alleged that American Food closed its plant because of the predominance of female employees at the plant.[124] The plaintiffs further alleged that they were persons aggrieved by their employer's sex discrimination because they lost their jobs as a result of the sex discrimination against females.[125] According to the Allen court, "the scope of the language 'person aggrieved' confers standing to all persons injured by an unlawful employment practice."[126] Applying this broad definition of standing, the Northern District of Indiana concluded that the male employees had standing because they suffered their own cognizable injuries due to the sex discrimination aimed at the female employees.[127]

3. *Who Has Standing in a Title VII Case Brought in the Third Circuit?*

The United States Court of Appeals for the Third Circuit adopts the view that standing should be interpreted broadly in *all* Title VII cases.[128] According to the court in *Hackett*, the language "a person claiming to be aggrieved" in Title VII demonstrates a congressional intention to describe standing as broadly as is permitted by Article III, thereby eliminating any

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terms differently in the two statutes—broadly in Title VIII and narrowly in Title VII. *See id.* at 1209 (declining to follow *Trafficante*).

121. For a discussion of courts that define standing broadly in cases where a male employee is bringing suit for sex discrimination even though the discrimination was directed towards his female co-workers, see *infra* notes 122-28 and accompanying text.

122. 644 F. Supp. 1553 (N.D. Ind. 1986).

123. *See id.* at 1557 (holding that male employees who lost their jobs when employer closed plant had standing to bring Title VII sex discrimination case even though discrimination was directed at female employees because decision to close plants may have been based on considerations of sex).

124. *See id.* at 1554-55 (stating facts of case).

125. *See id.* at 1555 (explaining plaintiffs' standing argument).

126. *Id.* at 1557 (citing *Stewart v. Hannon*, 675 F.2d 846 (7th Cir. 1982)).

127. *See id.* (granting male employees standing to bring Title VII sex discrimination suit because they were "assert[ing] their own injuries . . . their own rights," and not rights of some third person).

128. *See* NAACP v. Town of Harrison, 907 F.2d 1408, 1412 n.7 (3d Cir. 1990) (defining standing broadly to effectuate purposes of Title VII); Novotny v. Great Am. Fed. Sav. & Loan Ass'n, 584 F.2d 1235, 1244 (3d Cir. 1978) (same); Rosen v. Public Serv. Elec. & Gas Co., 477 F.2d 90, 94 (3d Cir. 1973) (stating Congress intended standing for purposes of Title VII to be defined "as broadly as is permitted by Article III of the Constitution"); Hackett v. McGuire Bros., 445 F.2d 442, 446 (3d Cir. 1971) (stating standing in Title VII cases must be defined "as broadly as is permitted by Article III of the Constitution").

prudential standing requirements.[129] As a result, all that is necessary to confer standing on a plaintiff in a Title VII discrimination case brought in the Third Circuit is a showing that he or she was "sufficiently aggrieved so that he [or she] claims enough injury in fact to present a genuine case or controversy in the Article III sense . . . ."[130]

Despite its view that standing should be interpreted broadly in Title VII cases, the United States Court of Appeals for the Third Circuit has

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129. *See Hackett*, 445 F.2d at 446-47 (concluding standing in Title VII must be defined broadly in order to effectuate Congress' purpose for enacting Title VII). According to the United States Court of Appeals for the Third Circuit in *Hackett*, "[t]he national public policy reflected . . . in Title VII . . . may not be frustrated by the development of overly technical judicial doctrines of standing . . . ." *Id.* at 446-47.

130. *Id.* at 447. In *Hackett*, the employee was alleging that he had been discriminated against on the basis of race with respect to his employment. *See id.* at 444. At the time the suit was brought, however, the employee was no longer working for the employer but he was receiving pension benefits. *See id.* at 445. The United States District Court for the Eastern District of Pennsylvania dismissed the employee's suit, stating that as a pensioner he was not an employee within the meaning of Title VII and therefore did not have standing to sue for race discrimination under Title VII. *See id.* (stating procedural history). The United States Court of Appeals for the Third Circuit, however, rejected the district court's conclusion and granted the employee standing. *See id.* (explaining district court erroneously relied upon definition of "employee" in § 701(f) of Title VII when concluding employee, as pensioner, lacked standing because definition section of Title VII does not speak to issue of standing). According to the Third Circuit, "a person claiming to be aggrieved" has standing to bring a Title VII discrimination claim. *See id.* (defining standing under Title VII broadly). In defining "a person claiming to be aggrieved," the court explained that "any person aggrieved by any of the forbidden practices" meets the standing requirements even if the person was never employed by the defendant. *See id.* (noting Title VII "forbids discrimination not only by employers . . . but also by potential employers, . . . labor organizations, and by employment agencies").

Many other courts have adopted the test of standing developed in *Hackett*. *See* Anjelino v. New York Times Co., 200 F.3d 73, 91 (3d Cir. 1999) (noting that several circuits have cited *Hackett* decision with approval and have expressly adopted court's reasoning when construing Title VII's standing requirements); Clayton v. White Hall Sch. Dist., 875 F.2d 676, 679-80 (8th Cir. 1989) (defining standing broadly in race discrimination claim under Title VII and citing *Hackett* to support its holding); Stewart, 675 F.2d at 850 (same); EEOC v. Mississippi College, 626 F.2d 477, 482 (5th Cir. 1980) (same); EEOC v. Bailey Co., 563 F.2d 439, 454 (6th Cir. 1977) (same); Waters v. Heublin, Inc., 547 F.2d 466, 469-70 (9th Cir. 1976) (same). The circuits that have adopted the *Hackett* test have applied it when construing Title VII's standing requirements in race discrimination cases. *See Anjelino*, 200 F.3d at 91 (noting that other circuits follow *Hackett* when construing standing in race discrimination claims under Title VII). Despite the wide acceptance of *Hackett* in the race discrimination context, no other circuit has accepted such a broad test for standing in sex discrimination claims under Title VII. *But see Allen*, 644 F. Supp. at 1557 (applying *Hackett* test to sex-based discrimination claim under Title VII). For a discussion of the narrow approach the circuits take when construing standing in sex discrimination claims under Title VII, see *supra* notes 113-20 and accompanying text.

placed a limit on who has standing to sue.[131] Specifically, the Third Circuit requires that the person alleging to be aggrieved show a distinct and palpable injury that is fairly traceable to the defendant's discriminatory practices before standing will be recognized.[132] To meet this burden, the United States Court of Appeals for the Third Circuit in *Stephens v. Kerrigan*[133] held that the plaintiff must possess the qualifications that are necessary for the position.[134] If the plaintiff fails to possess the qualifications,

131. *See* Stephens v. Kerrigan, 122 F.3d 171, 180 (3d Cir. 1997) (noting that plaintiff must show that his injury was caused by defendant's unlawful conduct and not by some other factor).

132. *See id.* at 180 (stating test for standing is whether plaintiff is able to show "some realistic threshold causal connection between the injury suffered and the defendant's unlawful conduct"); *see also Town of Harrison,* 907 F.2d at 1416 (noting that without showing "a distinct and palpable injury" standing will not be recognized).

133. 122 F.3d 171 (3d Cir. 1997).

134. *See id.* at 180-81 (noting plaintiff must show some realistic threshold causal connection between employer's unlawful employment practice and injury suffered); *see also* Doherty v. Rutgers Sch. of Law-Newark, 651 F.2d 893, 902 (3d Cir. 1981) (denying law student standing to challenge alleged discriminatory minority admissions program because although student asserted injury—denial of admission to law school—this loss was not caused by law school's minority admissions program, because law student was not otherwise qualified for admission); Howard v. New Jersey Dep't of Civil Serv., 667 F.2d 1099, 1101-02 (3d Cir. 1981) (noting that because employees were not qualified for job opportunity employer's unlawful employment practice could not have caused their loss).

In *Stephens,* the plaintiffs, who were police officers at the Allentown Police Department, alleged that they were denied promotions because they opposed or failed to support the candidacy of the elected Mayor and/or supported his rival. *See Stephens,* 122 F.3d at 173-76. Under the terms of the police department's promotion procedures, candidates were placed on the promotion list according to their seniority and their scores from oral interviews and evaluations. *See id.* at 174. Once all the candidates were placed, promotions were granted to the top three officers on the list. *See id.* The plaintiffs, who were ranked within the top three positions on the promotion lists, were passed over for promotions. *See id.* at 180-81 (noting that because plaintiffs occupied top three spots on promotion list they were eligible for promotion). The United States Court of Appeals for the Third Circuit concluded that the plaintiffs were qualified for the promotions; therefore, they adequately established a basis for finding the requisite causation. *See id.* (concluding plaintiffs met burden of showing causal connection between their injury and employer's alleged unlawful conduct). In so holding, the Third Circuit distinguished *Stephens* from *Howard. See id.* at 181 (recognizing differences between cases). Specifically, the Third Circuit explained that unlike the employees in *Stephens,* who were qualified for the promotions, the employees in *Howard* were not qualified for the job opportunities. *See id.* at 180-81 (noting differences between *Stephens* and *Howard*). Therefore, the claims in *Howard* failed because the employees were not qualified for the job opportunity, which made them unable to establish a causal connection between the loss of a job opportunity and the employer's alleged discriminatory employment practices. *See id.* at 181 (concluding that unlike *Howard,* employees were qualified and were able to establish causal connection between employer's alleged unlawful employment practices and their resulting injury). Although *Stephens* was a political discrimination case rather than an employment discrimination case, brought under Title VII, *Stephens* is relevant to this discussion of Title VII because plaintiffs in a political discrimination case and the plaintiffs in a Title VII case must satisfy similar tests to establish standing. *See id.* at

then the employee is unable to claim that the loss of a job opportunity was caused by the employer's unlawful employment practices.[135] For example, the Third Circuit in *Howard v. New Jersey Department of Civil Service*[136] refused to grant the plaintiffs standing to challenge the physical agility test administered by the Newark Police Department as discriminatory against women.[137] The *Howard* court refused to grant the plaintiffs standing because it concluded that they were not qualified to take the agility test because they had not passed the prerequisite civil service examination.[138] Thus, the Third Circuit concluded that there was no causal connection because, even if the Newark Police Department did engage in unlawful employment practices, the plaintiffs still would not have received the job opportunity because they lacked the necessary qualifications.[139]

IV. ANALYSIS OF *ANJELINO V. NEW YORK TIMES CO.*: GRANTING MEN STANDING IN SEXUAL DISCRIMINATION CLAIMS UNDER TITLE VII IN THE THIRD CIRCUIT

A. *Issue, Facts and Procedural Posture*

In *Anjelino*, a group of former mail room employees ("Employees") at the New York Times Company ("Times") brought an employment discrimination action against the Times.[140] Specifically, the Employees, who were female and male, alleged discrimination by the Times on the basis of sex.[141] Both the female and male Employees alleged they were victims of sex discrimination on a daily basis with respect to compensation, assign-

176 (noting that political discrimination cases employ similar burden-shifting mechanisms as those used in employment discrimination cases brought under Title VII). For a further discussion of *Howard*, see *infra* notes 136-39 and accompanying text.

135. *See Stephens*, 122 F.3d at 180-81 (granting standing to employees qualified for promotions and concluding that they established basis for finding causation because they were denied promotions even though they were qualified); *see also Howard*, 667 F.2d at 1101-02 (concluding causal requirement of standing not met because employees were not qualified to take physical agility test and their loss of opportunity to take agility test was not caused by employer's alleged discrimination against women, but rather by employees' lack of qualification); *Doherty*, 651 F.2d at 902 (denying standing to challenge law school admission program because law student was not otherwise qualified for admission).

136. 667 F.2d 1099 (3d Cir. 1981).

137. *See id.* at 1103 (noting students had no standing to sue because they failed prerequisite written examination).

138. *See id.* at 1101-02 (concluding no causal connection between employer's alleged discriminatory employment practices and employees' loss of job opportunity.

139. *See id.* (noting plaintiffs failed to establish causal connection because they were not qualified to take agility test).

140. *See* Anjelino v. New York Times Co., 200 F.3d 73, 78 (3d Cir. 1999).

141. *See id.*

ment of work, abusive atmosphere and other terms and conditions of employment.[142]

The Employees, who were extras staffed at the Times, claimed "to have been the subject of a 'day-in, day-out, year-in, year-out' barrage of sexual discrimination . . . ."[143] As extras, the Employees were substitute workers that were hired on an as-needed basis according to their seniority on a priority list kept by the Times' management.[144] According to the Employees, the daily sex-based discrimination interfered with their ability to advance on the priority list.[145] Specifically, the Employees claimed that because of the discriminatory practices and beliefs at the Times, the management manipulated the policies regarding hiring from the priority list in ways that limited the employment opportunities of females.[146] For instance, the Employees claimed that hiring for work shifts commonly stopped just before the names of the women were reached on the priority

142. *See id.* at 83. Specifically, the Employees alleged that a hostile work environment was created by crude language and behavior directed at female employees by male mailroom employees and by male employees of the Times. *See id.* at 81. For instance, the male employees often yelled and subjected women to demeaning and threatening language, such as continuously telling the female employees they "don't want women here." *See id.* at 82 (describing hostile environment). The female employees were also subjected to offensive comments about their anatomy, such as a frequent comment by one of the supervisors, in which he referred to a female employee's breasts by asking the male employees if they "moo, moo . . . want some milk." *Id.* The female employees were also continuously subjected to crude conduct such as the display of nude pictures throughout the workplace, the mooning of female workers and the hiring of a female stripper who performed in the workplace during work hours. *See id.* (describing working conditions). According to the Employees, supervisory personnel at the Times were aware of this discriminatory conduct but they failed to proscribe or discourage such harassment or punish its perpetrators. *See id.* (discussing allegations of inaction by employer). For a discussion of the elements of a hostile work environment claim, see *supra* notes 46-47 and accompanying text.

143. Anjelino v. New York Times Co., No. Civ. A. 92-2582 1993 WL 170209, at *3 (D.N.J. 1993).

144. *See Anjelino*, 200 F.3d at 79. Under the Times staffing plan, the mailroom was to be staffed by regular, full-time employees and extras. *See id.* An extra's seniority was determined by assessing the mailer's position on the publisher's priority list, which divided mailers into five categories, "A" through "E." *See id.* When first hired, extras were placed on the "E" list and they were able to move up the list by working a set number of shifts. *See id.* In order to be placed on the "A-B" priority list, an extra was required to work at least 180 shifts during the preceding year. *See id.* If an extra failed to meet the requirements for advancement to the "A-B" priority list for two out of three successive years, the extra was automatically delisted. *See id.*

145. *See id.* at 80 (stating facts). According to the Employees, a type of "leapfrogging" occurred repeatedly over time when men, who had less seniority on the priority list, were hired for work shifts rather than the more senior female employees. *See id.* In addition, all but one of the Employees, both male and female, were delisted from the list even though other male employees who had not complied with the staffing requirements were not delisted. *See id.* at 76.

146. *See id.* at 80 (discussing Employees' allegations of discrimination).

list.[147] Neither female nor male employees beyond this point were hired.[148]

Fed up with the discriminatory practices, the Employees filed charges of sex discrimination with the Equal Employment Opportunity Commission (EEOC).[149] Both the female and male Employees filed charges alleging sex-based discrimination with regards to the terms and conditions of employment and alleging that the discrimination created a hostile work environment.[150] Additionally, the male Employees alleged that they were "discriminatorily treated because [their] priority number[s] on the workplace seniority list [were] in between the priority numbers of the women mailers . . . [and they claimed] [s]uch discrimination was based on sex."[151] The EEOC granted each employee a "notice of right to sue," and the Employees filed suit in the United States District Court of New Jersey.[152] Upon reviewing the record, the district court dismissed the male Employees' claims for lack of standing to sue.[153] Following the dismissal of their claim, the male Employees appealed to the Third Circuit.[154] Specifically, the Employees asked the Third Circuit to decide whether indirect victims of sex-based discrimination have standing to assert claims under Title VII.[155]

B. *The Third Circuit's Analysis of Standing in Title VII Claims – A Developing Approach*

1. *Broadly Defining Standing in Discrimination Suits Under Title VII*

In *Anjelino*, the court took a broad view of standing in Title VII cases and granted "indirect victims of sex-based discrimination . . . standing to assert claims under Title VII if they allege colorable claims of injury-in-fact that are fairly traceable to acts or omissions by defendants that are unlawful under the statute."[156] According to the court in *Anjelino*, as long as the

147. *See id.* (stating facts). This refusal to hire females for work shifts caused the female Employees to lose hundreds of hours of work and wages and also to lose seniority. *See id.*

148. *See id.* Thus, although the discrimination was directed only at females, some male employees were also indirectly harmed by the discrimination. *See id.* The male employees lost hours of work, wages and seniority because of the sex-based discrimination. *See id.* (noting both male and female Employees suffered injury because of sex discrimination).

149. *See id.* at 84.

150. *See id.* (stating charges alleged by Employees).

151. *Id.* at 85.

152. *See id.*

153. *See id.* (noting that male Employees' claims were dismissed under FED. R. CIV. P. 12(b)(6) for lack of standing to sue, but female Employees' claims were dismissed under FED. R. CIV. P. 12(b)(1) for failure to exhaust administrative remedies and for lack of timeliness, including lack of continuing violations).

154. *See id.* at 86.

155. *See id.* at 88-89 (stating procedural history).

156. *Id.* at 92.

plaintiff pleads a concrete injury-in-fact and a nexus between the injury and the sex-based discrimination, the plaintiff will have standing even though that discrimination was directly aimed at someone else.[157] This holding is consistent with the Third Circuit's long-held belief that Congress intended standing for Title VII claims to be defined as broadly as is permitted by Article III.[158]

The Third Circuit explained its analysis of Title VII's broadly interpreted standing *Hackett*, in which an African-American plaintiff suffered race-based discrimination in violation of Title VII.[159] In particular, he was subjected to separate seniority and vacation schedules, harassment and intimidation, and the conditions of his employment were otherwise adversely affected because of his race.[160] The United States District Court for the Eastern District of Pennsylvania refused to grant standing to the plaintiff because when he brought suit he was no longer an employee of the defendant.[161] The United States Court of Appeals for the Third Circuit, however, reversed the district court's holding, concluding that the standing doctrine must not be interpreted in a way that frustrates Congress' purpose in enacting Title VII.[162] Referring to the language of Title VII that grants standing to "a person claiming to be aggrieved," the Third Court explained that "[a]n aggrieved person is obviously *any* person aggrieved by any of the [discriminatory] practices."[163] In *Hackett*, the United States Court of Appeals for the Third Circuit adopted the broad definition of standing for Title VII race discrimination cases; this definition has persisted in the Third Circuit and has been adopted by many other jurisdic-

157. *See id.* (affirming idea that as long as indirect victim of sex-based discrimination satisfies standing requirements, he can sue for violation of Title VII).

158. *See* Hackett v. McGuire Bros., 445 F.2d 442, 446 (3d Cir. 1971) (holding "the language 'a person claiming to be aggrieved' shows a congressional intention to define standing as broadly as is permitted by Article III").

159. *See id.* at 444 (stating facts of case).

160. *See id.* (describing plaintiff's allegations of discrimination).

161. *See id.* at 445 (stating procedural history).

162. *See id.* at 446-47 (holding standing doctrine should be interpreted broadly in Title VII cases in order to further Congress' goals for enacting Title VII). Specifically the court stated:

> The national public policy reflected . . . in Title VII . . . may not be frustrated by the development of overly technical judicial doctrines of standing . . . . If the plaintiff is sufficiently aggrieved so that he claims enough injury in fact to present a genuine case or controversy in the Article III sense, then he should have standing to sue in his own right . . . .

Id.

163. *Id.* at 445 (emphasis added). For instance, a plaintiff claiming he is discriminated against because of his race is aggrieved. *See id.* at 445-46 (concluding plaintiff was aggrieved because of race-based discrimination and granting him standing to sue). Likewise, a plaintiff who claims he suffered economic losses because of sex-discrimination is aggrieved. *See* Anjelino v. New York Times Co., 200 F.3d 73, 89 (3d Cir. 1999) (holding male Employees were aggrieved because they suffered pecuniary injury due to employer's discriminatory practices).

tions.[164] The Third Circuit also eventually extended this broad definition of standing to sex-based discrimination claims under Title VII via its holding in *Anjelino.*

2. *Extending the Broad Definition of Standing to Encompass Males in Sexual Discrimination Suits Under Title VII*

As the district court correctly explained in *Anjelino,* the general rule is that men do not have standing to bring claims of sex discrimination under Title VII when the discrimination is directed at females.[165] Despite this general rule, the United States Court of Appeals for the Third Circuit extended its broad definition of standing to the sexual discrimination context and concluded that an "aggrieved person" includes any person adversely affected by sex-based discrimination, whether that person is male or female.[166] Thus the court, referring to three exceptions to the general rule that had been recognized by other courts, concluded that in some instances a man has standing to sue for sex discrimination under Title VII.[167] Under these exceptions, a male employee may bring a cause of action for sex discrimination under Title VII if: "[1] male employees are subjected to discrimination 'because they are men' . . . [2] discrimination directed at women results in a loss of interpersonal rights with women; [or] [3] sex-based discrimination results in pecuniary injury to both male and female workers."[168] The district court concluded that the injuries alleged by the male Employees did not fall into one of these three exceptions; therefore, the discrimination was aimed at the female employees

164. *See Hackett,* 445 F.2d at 445 (granting standing in Title VII claim to any plaintiff who has been "aggrieved by any of the forbidden practices"); *see also Anjelino,* 200 F.3d at 91 n. 25 (discussing other circuits that have applied *Hackett*'s rationale).

165. *See Anjelino,* 200 F.3d at 89 (noting most circuits conclude men do not have standing to sue for sexual discrimination when discrimination is directed at females).

166. *See id.* at 89-91 (extending broad definition of "aggrieved person" to sexual discrimination context, thereby granting male employees standing to sue for sex discrimination directed at female employees when male has suffered some type of injury because of discrimination).

167. *See id.* at 89 (granting men standing to sue in sex discrimination claims under Title VII (citing *Anjelino v. New York Times Co.*, No. Civ. A. 92-2582, 1993 WL 170209, at *10 (D.N.J. 1993) (noting exceptions to general rule that men do not have standing to sue for sex discrimination directed towards females)).

168. *Id.* (citing *Patee v. Pacific Northwestern. Bell Tel. Co.,* 803 F.2d 476, 478 (9th Cir. 1986) (granting men standing to sue for sex discrimination under Title VII if they are subjected to discrimination "because they are men"); Allen v. American Home Foods, Inc., 644 F. Supp. 1553, 1557 (N.D. Ind. 1986) (noting male employees may sue for sex discrimination if sex-based discrimination results in pecuniary loss to male employee). The exception granting standing to men who suffered a loss of interpersonal rights with women as a result of sex discrimination towards women was never specifically adopted by any other court. *Cf. Anjelino,* 200 F.3d at 89 (noting that court found exception through reasoning by analogy from United States Supreme Court's associational standing precedent in context of race discrimination).

directly and was without consequence to the male employees.[169] The United States Court of Appeals for the Third Circuit, however, reversed the district court's holding and concluded that the Employees were "aggrieved persons" because their claims fell within the third exception.[170] The court concluded that the male Employees were aggrieved because they suffered pecuniary loss through denial of advancement on the priority list as a result of the sex-based discrimination aimed at the female Employees.[171]

After concluding that the male Employees asserted an actionable injury, the court focused on the causation element of standing.[172] The causation element of standing is met if the plaintiff shows that "the injury for which redress is sought . . . [is] traceable to the challenged actions of the defendants, not to 'injury that results from the independent action of some third party not before the court.'"[173] To meet this burden, the Third Circuit in *Stephens* said the plaintiff must show that the discrimination was "more likely than not a motivating or substantial cause of the adverse [employment] action."[174]

The court in *Anjelino* concluded that the male Employees met this burden and sufficiently demonstrated a nexus between the sexual discrimination directed at the female Employees and the male Employees' seniority on the priority list.[175] This conclusion is consistent with prior decisions in the Third Circuit.[176] In prior cases considering whether a plaintiff had standing to challenge alleged discriminatory practices in promotion decisions, the United States Court of Appeals for the Third Circuit has concluded that a plaintiff has standing if he or she shows that the employment decision was based on an impermissible motive, and but for this motive,

169. *See Anjelino,* 200 F.3d at 89 (refusing to grant male Employee's standing to bring sex-based discrimination claim under Title VII).

170. *See id.* at 90-92 (applying broad definition of standing and reversing district court's holding).

171. *See id.* (granting male Employee's standing to sue for sex discrimination).

172. *See id.* at 91-92 (discussing causation).

173. Hospital Council v. City of Pittsburgh, 949 F.2d 83, 87 (3d Cir. 1991) (citation omitted).

174. Stephens v. Kerrigan, 122 F.3d 171, 181 (3d Cir. 1997).

175. *See Anjelino,* 200 F.3d at 92 (concluding causation element of standing was met).

176. *See* Robinson v. City of Pittsburgh, 120 F.3d 1286, 1299 (3d Cir. 1997) (holding that being denied desired transfer after refusing supervisor's sexual advances is sufficient evidence for jury to conclude denial of transfer was caused by employee's refusal of supervisor's advances); *see also Stephens,* 122 F.3d at 181 (explaining plaintiff must show some realistic causal connection between alleged injury and defendant's unlawful conduct); Howard v. New Jersey Dep't of Civil Serv., 667 F.2d 1099, 1101-02 (3d Cir. 1981) (same); Doherty v. Rutgers Sch. of Law-Newark, 651 F.2d 893, 902 (3d Cir. 1981) (noting that if plaintiff suffers loss of some opportunity then causation element is satisfied if plaintiff can show he or she was qualified for opportunity and would have received opportunity if it were not for defendant's discriminatory practices).

the plaintiff would have been qualified for the promotion.[177] Thus, consistent with its prior decisions, the court accurately concluded that the male Employees established a realistic causal connection because they would have been qualified to advance on the priority list if it were not for the fact that their names fell after the names of the female Employees.[178]

V. PRACTITIONER'S NOTES

Prior to the United States Court of Appeals for the Third Circuit's decision in *Anjelino*, a male employee was unable to bring a sex discrimination claim under Title VII to seek redress for a concrete injury that he suffered as a result of discrimination aimed at female employees.[179] The holding in *Anjelino* gives indirect victims of sex-based discrimination standing to assert claims under Title VII when they have suffered some cognizable injury as a result of the discrimination towards female co-workers.[180] Thus, the holding in *Anjelino* makes employers potentially liable to all persons affected by sex-based discriminatory practices, even if the discrimination was initially aimed at the opposite sex.[181]

Despite the detail of the court's opinion, the decision in *Anjelino* leaves several important questions unanswered. First, in *Anjelino*, the male

177. *See Robinson*, 120 F.3d at 1229 (noting evidence supports jury's finding that supervisor refused to recommend employee for transfer because she refused his advances). For a further discussion of a prior Third Circuit holding that the causation element is satisfied only if the plaintiff would have been qualified for the job opportunity see, *supra* notes 135-39 and accompanying text.

In *Robinson*, the employee alleged that her employer sexually harassed her on several different occasions. *See Robinson*, 120 F.3d at 1291 (stating facts). The employee never acceded to the sexual advances and she made it clear to the supervisor that the conduct was unwelcome. *See id.* Eventually, the supervisor informed the employee that he was not going to recommend her for a transfer to the detective bureau, even though he had repeatedly told her in the past that he would make such a recommendation. *See id.* at 1298. She filed suit claiming among other things that she was denied a transfer to the detective bureau because she had repeatedly rebuffed her supervisor's advances. *See id.* The United States Court of Appeals for the Third Circuit concluded that the evidence was sufficient for a reasonable fact finder to conclude the employee was denied the transfer because she refused her supervisor's advances. *See id.* (concluding employee established claim for sexual discrimination). In so holding, the Third Circuit explained "that, in contrast to minor slights like 'negative comments,' receiving or being denied a promotion is sufficiently serious and tangible to constitute a change in the employee's 'terms, conditions, or privileges' of employment." *Id.* at 1299 (citations omitted).

178. *See Anjelino*, 200 F.3d at 92 (finding causal connection between employer's sex-based discriminatory employment practices and employees alleged injury).

179. For a discussion of the development of standing in Title VII cases brought in the Third Circuit, see *supra* notes 128-39 and accompanying text.

180. *See Anjelino*, 200 F.3d at 92 (concluding fact that "the injury at issue is characterized as indirect is immaterial, as long as it is [a colorable claim of injury-in-fact that is fairly] traceable to the defendant's unlawful acts or omissions").

181. *See generally id.* (holding employers liable for injuries suffered by male employees that resulted from discrimination aimed at female employees).

Employees bringing suit suffered some pecuniary loss as a result of the discrimination aimed at the female Employees.[182] If the male Employees did not suffer any type of financial loss, but rather alleged as their injury the loss of associations with female co-workers, would the male Employees be granted standing to sue? Second, the Employees claimed that their employer's discriminatory employment practices created a hostile work environment.[183] Thus, in granting relief, the court granted standing to male employees who brought a hostile work environment claim under Title VII. But would the court also grant standing to male employees bringing a quid pro quo sexual harassment suit?

As to the first unanswered question, one could assume that a male employee alleging that his employer's discriminatory practices towards women caused him to lose the benefits of associations with female co-workers would have standing to sue.[184] In *Anjelino,* the Third Circuit acknowledged that other courts had recognized that there are three situations when a man has standing to sue for sex discrimination under Title VII.[185] Specifically, a man has standing to sue when he is discriminated against because he is a man, when the discrimination towards women results in a loss of association with women and when he has suffered some pecuniary loss as a result of discrimination towards women.[186] Although the court did not expressly adopt each of these exceptions in *Anjelino,* by mentioning the exceptions, perhaps the court intended to express its approval of them.[187] Furthermore, it is the Third Circuit's policy to define standing broadly in Title VII cases.[188] Therefore, because the United States Supreme Court recognizes standing when the plaintiff alleges that race-based discriminatory practices caused him to lose the benefits of interracial contacts, it is likely that the United States Court of Appeals for the Third Circuit will follow the Supreme Court's sweeping approach and grant

182. *See id.* at 89 (noting that although the discrimination was directed only at females, some male Employees were also indirectly harmed by the discrimination).

183. *See id.* at 80 (noting employees claim of hostile work environment).

184. *Compare id.* (granting male employees alleging injury as a result of employer's discriminatory practices towards women standing), *with* Waters v. Heublein, 547 F.2d 466, 469 (9th Cir. 1976) (concluding that employee had standing to sue for racial discrimination aimed at minority co-workers because employee suffered injury when employer denied employee access to important interracial associations with minority co-workers).

185. *See Anjelino,* 200 F.3d at 89 (noting that three exceptions to general rule that men do not have standing in sex discrimination cases have been recognized).

186. For a discussion of the exceptions, see *supra* notes 167-69 and accompanying text.

187. *See Anjelino,* 200 F.3d at 89 (noting only that male Employees fall into third exception, which provides that male employees may have standing if sex-based discrimination results in pecuniary loss to both male and female workers).

188. *See* Hackett v. McGuire Bros., 445 F.2d 442, 446 (3d Cir. 1971) (noting standing should be defined broadly in discrimination cases brought under Title VII cases).

standing to a male plaintiff alleging that his employer's sex discrimination interfered with his right to associate with women.[189]

As to the second unanswered question, it is possible that the court would grant a male plaintiff standing to sue for quid pro quo sexual harassment directed towards his female co-workers. Although the Ninth Circuit and Fourth Circuit have concluded that a male employee cannot assert the rights of his female co-workers, the Third Circuit is unlikely to define standing so narrowly.[190] It has been the Third Circuit's policy to construe standing as broadly as is permitted by Article III, thereby ignoring any prudential limitations.[191] Consequently, if the Third Circuit continues to follow this policy, it will allow men to assert the rights of females by suing for quid pro quo sexual harassment.

VI. CONCLUSION

The United States Court of Appeals for the Third Circuit's decision in *Anjelino* represents its desire to promote the goals of Congress by granting more individuals standing in Title VII claims.[192] Specifically, the court's decision demonstrates the desire to protect any employee who is indirectly or directly affected by discriminatory practices, regardless of the basis of the discrimination.[193] Although other circuits have defined standing broadly in race discrimination claims brought under Title VII, no other circuit has interpreted standing broadly for claims based on sex discrimination.[194] The court's holding in *Anjelino* warns employers that courts in the Third Circuit will allow any employee who is "aggrieved by forbidden practices" to bring suit in order to fight discrimination in the workplace.[195] In so holding, the Third Circuit has moved one step closer to reviving "[t]he hopeful prospects that Title VII offered millions of Ameri-

189. For a discussion of the United States Supreme Court's decision granting standing to plaintiffs alleging a loss of interracial associations as a result of racially discriminatory practices, see *supra* notes 89-94 and accompanying text.

190. For a further discussion of the views of the Ninth and Fourth Circuits on standing, see *supra* notes 114-20 and accompanying text.

191. *See Hackett*, 445 F.2d at 446 (stating standing in Title VII cases must be defined "as broadly as is permitted by Article III of the Constitution").

192. For a discussion of Congress' purpose for enacting Title VII, see *supra* notes 1, 20-24 and accompanying text.

193. *See generally* Anjelino v. New York Times Co., 200 F.3d 73, 92 (3d Cir. 1999) (granting indirect victims of discrimination standing).

194. For a discussion of the circuit split regarding who has standing to sue in a sex discrimination case under Title VII, see *supra* notes 9-14 and accompanying text.

195. For a discussion of the Third Circuit's holding, see *supra* notes 156-78 and accompanying text.

cans in 1964,"[196] which is the prospect of working in an environment free of discrimination.[197]

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196. H.R. REP. No. 92-238, at 4-5 (1972), *reprinted in* 1972 U.S.C.C.A.N. 2137, 2140-41.

197. When amending Title VII in 1972, Congress explained that the "experiences of the last 6 years under Title VII, while in many respects reflecting major advancements in securing equal opportunity for all Americans, nonetheless are disappointing in terms of what . . . women in this country have a right to expect." *Id.* at 5. Thus, Congress proclaimed that the "time has come to bring an end to job discrimination once and for all, and to insure every citizen the opportunity for the decent self-respect that accompanies a job commensurate with one's abilities." *Id.*